



METRO

Agenda

MEETING: METRO COUNCIL
DATE: December 10, 2009
DAY: Thursday
TIME: 2:00 p.m.
PLACE: Metro Council Chamber

CALL TO ORDER AND ROLL CALL

1. INTRODUCTIONS

2. CITIZEN COMMUNICATIONS

3. CONSENT AGENDA

- 3.1 Consideration of Minutes for the December 3, 2009 Metro Council Regular Meeting.
- 3.2 **Resolution No. 09-4087**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to American Sanitary Service, Inc. for Delivery of Putrescible Waste to the West Van Materials Recovery Center and the Central Transfer and Recycling Center.
- 3.3 **Resolution No. 09-4088**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to Crown Point Refuse, Inc. for Delivery of Putrescible Waste to the Wasco County Landfill.
- 3.4 **Resolution No. 09-4089**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to Arrow Sanitary Service, Inc. for Delivery of Putrescible Waste to the West Van Materials Recovery Center and the Central Transfer and Recycling Center.
- 3.5 **Resolution No. 09-4090**, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to Willamette Resources, Inc. for Delivery of Putrescible Waste to the Coffin Butte Landfill.
- 3.6 **Resolution No. 09-4096**, For the Purpose of Confirming the Reappointment of Members to the Nature in Neighborhoods Capital Grants Review Committee and Appointing a New Person in the Water Quality Specialist Position.
- 3.7 **Resolution No. 09-4097**, For the Purpose of Approving a Settlement Agreement with Waste Connections of Oregon, Inc., DBA Arrow Sanitary Service, Inc., and Waste Connections, Inc. Regarding Metro Notice of Violation Nos. NOV-227-09, NOV-228-09, and NOV-227A-09.

4. RESOLUTIONS

- 4.1 **Resolution No. 09-4094**, For the Purpose of Accepting the Population and Employment Forecasts and the Urban Growth Report as Support for Determination of Capacity of the Urban Growth Boundary. Hosticka
- 4.2 **Resolution No. 09-4095**, For the Purpose of Authorizing the Chief Operating Officer to Purchase Property in the Chehalem Ridgetop to Refuge Target Area Under the 2006 Natural Areas Bond Measure and Subject to Unusual Circumstances. Harrington

5. CHIEF OPERATING OFFICER COMMUNICATION

6. COUNCILOR COMMUNICATION

ADJOURN

Television schedule for December 10, 2009 Metro Council meeting

Clackamas, Multnomah and Washington counties, and Vancouver, Wash. Channel 11 – Community Access Network www.tvctv.org – (503) 629-8534 2 p.m. Thursday, December 10 (Live)	Portland Channel 30 (CityNet 30) – Portland Community Media www.pcmv.org – (503) 288-1515 8:30 p.m. Sunday, December 13 2 p.m. Monday, December 14
Gresham Channel 30 – MCTV www.mctv.org – (503) 491-7636 2 p.m. Monday, December 14	Washington County Channel 30 – TVC-TV www.tvctv.org – (503) 629-8534 11 p.m. Saturday, December 12 11 p.m. Sunday, December 13 6 a.m. Tuesday, December 15 4 p.m. Wednesday, December 16
Oregon City, Gladstone Channel 28 – Willamette Falls Television www.wftvaccess.com – (503) 650-0275 Call or visit website for program times.	West Linn Channel 30 – Willamette Falls Television www.wftvaccess.com – (503) 650-0275 Call or visit website for program times.

PLEASE NOTE: Show times are tentative and in some cases the entire meeting may not be shown due to length. Call or check your community access station web site to confirm program times.

Agenda items may not be considered in the exact order in which they are listed. If you have questions about the agenda, please call the Council Office at (503) 797-1540. Public hearings are held on all ordinances second read and on resolutions upon request of the public. Documents for the record must be submitted to the Council Office to be included in the decision record. Documents may be submitted by e-mail, fax, mail or in person at the Council Office. For additional information about testifying before the Metro Council, and for other public comment opportunities, please go to this section of the Metro website www.oregonmetro.gov/participate. For assistance per the American Disabilities Act (ADA), dial Metro's TDD line (503) 797-1804 or (503) 797-1540 for the Council Office.

Agenda Item Number 3.1

**Consideration of Minutes of the December 3, 2009 Metro Council
Regular Meeting**

Consent Agenda

Metro Council Meeting
Thursday, December 10, 2009
Metro Council Chamber

Agenda Item Number 3.2

Resolution No. 09-4087, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to American Sanitary Service, Inc. for Delivery of Putrescible Waste to the West Van Materials Recovery Center and the Central Transfer and Recycling Center

Consent Agenda

Metro Council Meeting
Thursday, December 10, 2009
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER) RESOLUTION NO. 09-4087
TO ISSUE A RENEWED NON-SYSTEM LICENSE TO)
AMERICAN SANITARY SERVICE, INC. FOR) Introduced by Michael Jordan,
DELIVERY OF PUTRESCIBLE WASTE TO THE) Chief Operating Officer, with the
WEST VAN MATERIALS RECOVERY CENTER) concurrence of David Bragdon,
AND THE CENTRAL TRANSFER AND RECYCLING) Council President
CENTER)

WHEREAS, the Metro Code requires a non-system license of any person that delivers solid waste generated from within the Metro Region to a non-system disposal facility; and

WHEREAS, American Sanitary Service, Inc. ("American") holds Metro Solid Waste Facility Non-System License No. N-020-09C, which expires on December 31, 2009; and

WHEREAS, American has filed a completed application seeking renewal of the non-system license to deliver putrescible waste to the West Van Materials Recovery Center and the Central Transfer and Recycling Center for disposal under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control;" and

WHEREAS, the Metro Code Chapter provides that applications for non-system licenses for putrescible waste shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council; and

WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors under the Metro Code; and

WHEREAS, the Chief Operating Officer recommends that the non-system license be renewed together with specific conditions as provided in Exhibit A to this Resolution; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The non-system license renewal application of American is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. The Chief Operating Officer is authorized to issue to American a renewed Solid Waste Facility Non-System License substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this ____ day of _____, 2009.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

Resolution No. 09-4087

WJ:bjl
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600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1835 | FAX 503 813 7544



METRO

**METRO SOLID WASTE FACILITY
NON-SYSTEM LICENSE**

No. N-020-10

LICENSEE:

American Sanitary Service, Inc.
12820 NE Marx Street
Portland, OR 97230

CONTACT PERSON:

	Jason Craft	Dean Large
Phone:	(503) 251-1308	(360) 695-4858
Fax:	(503) 257-8699	(360) 695-5091
E-Mail:	jasoncr@wcnx.org	deanl@wcnx.org

MAILING ADDRESS:

American Sanitary Service, Inc.
12820 NE Marx Street
Portland, OR 97230

ISSUED BY METRO:

Michael Jordan, Chief Operating Officer

Date



1	NATURE OF WASTE COVERED BY LICENSE
	Putrescible solid waste that is generated by residential and commercial customers within the Metro region and collected by American Sanitary Service, Inc.
2	CALENDAR YEAR TONNAGE LIMITATION
	<p>(a) Licensee is authorized to deliver to the non-system facilities described in Section 3 of this license up to 3,848 tons per calendar year of the waste described in Section 1.</p> <p>(b) By no later than November 2, 2010, Metro's Chief Operating Officer ("COO") may release additional reserve tonnage and amend this license to adjust the calendar tonnage limitation as established by Metro Council and described in the staff report to Resolution No. 09-4087.</p>
3	NON-SYSTEM FACILITIES
	<p>The Licensee hereunder is authorized to deliver the waste described above in Section 1 to the following non-system facilities:</p> <p>West Van Materials Recovery Center 6601 NW Old Lower River Road Vancouver, WA 98660</p> <p>Central Transfer and Recycling Center 11034 NE 117th Avenue Vancouver, WA 98661</p> <p>This license is issued on condition that the non-system facilities named in this section are authorized to accept the type of waste described in Section 1. If Metro receives notice from Clark County or other appropriate regulatory authority that these non-system facilities are not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 7 of this license.</p>
4	TERM OF LICENSE
	The term of this license will commence on January 1, 2010 and expire at midnight on December 31, 2010, unless terminated sooner under Section 7 of this license.



5	REPORTING OF ACCIDENTS AND CITATIONS
	Licensee shall report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles transporting the solid waste authorized by this license.

6	Record Keeping and Reporting
	<p>(a) The Licensee shall keep and maintain accurate records of the amount of all solid waste that the Licensee delivers to the non-system facilities described in Section 3 of this license. The Licensee shall keep and maintain complete and accurate records of the following for all transactions with the authorized non-system facilities:</p> <ul style="list-style-type: none">i. Ticket or weight slip number from the non-system facility;ii. Material category designating the type of material transferred to the non-system facility;iii. Date the load was transferred to the non-system facility;iv. Time the load was transferred to the non-system facility;v. Net weight of the load; andvi. Fee charged by the non-system facility <p>(b) No later than the fifteenth (15th) day of each month, beginning with the first month following the commencement date of this license, Licensee shall:</p> <ul style="list-style-type: none">i. Transmit the records required under Section 6(a) above to Metro in an electronic format prescribed by Metro;ii. Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; andiii. Remit to Metro the requisite Regional System Fees and Excise Tax in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes. <p>(c) Licensee shall make all records from which Sections 6(a) and 6(b) above are derived available to Metro (or Metro's designated agent) for its inspection or copying, as long as Metro provides no less than three (3) business days written notice of an intent to inspect or copy documents. Licensee shall, in addition, sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system facilities named in Section 3, above.</p>



- (d) Metro may require the Licensee to report the information required by this Section on a weekly or daily basis.

7

ADDITIONAL LICENSE CONDITIONS

This license shall be subject to the following conditions:

- (a) The permissive transfer of solid waste to the non-system facilities, listed in Section 3, authorized by this license shall be subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.
- (b) In addition to the amendments by the COO authorized by Section 2 of this license, this license shall be subject to amendment, modification, or termination by the COO in the event that the COO determines that:
 - i. There has been sufficient change in any circumstances under which Metro issued this license;
 - ii. The provisions of this license are actually or potentially in conflict with any provision in Metro's disposal contract with Waste Management Disposal Services of Oregon, Inc., dba Oregon Waste Systems, Inc.;
 - iii. Metro's solid waste system or the public will benefit from, and will be better served by, an order directing that the waste described in Section 1 of this license be transferred to, and disposed of at, a facility other than the facilities listed in Section 3; or
 - iv. There has been sufficient change in the amount of tonnage available for allocation during the term of the license. In the event that additional tonnage becomes available for allocation, the COO may amend Section 2(a) of this license to increase the calendar year tonnage limitation by up to five percent in addition to the reserve tonnage amount described in Section 2(b).
- (c) This license shall, in addition to subsections (b)(i) through (b)(iv), above, be subject to amendment, modification, suspension, or termination pursuant to the Metro Code.
- (d) The Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.
- (e) This license shall terminate upon the execution of designated facility agreements with the facilities listed in Section 3 that authorizes the facilities to accept the waste described in Section 1 of this license.
- (f) This license authorizes the delivery of solid waste to the facilities listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than that specified in this license is prohibited unless authorized in writing by Metro.
- (g) The COO may direct the Licensee's waste flow under this non-system



	<p>license to Metro Central Transfer Station or Metro South Transfer Station with a minimum of 24 hours' written notice. Any redirection of the waste flow by the COO is effective immediately.</p> <p>(h) If the Licensee exceeds the calendar year limitation set forth in Section 2 of this license, each ton or portion thereof by which the Licensee exceeds the limitation constitutes a separate violation subject to a penalty of up to \$500.</p> <p>(i) At least once during the first half of the calendar year and once during the second half of the year, Licensee shall review its collection routes to determine which of its accounts are within the Metro region. Any adjustments are to be implemented in the next month's Regional System Fee and Excise Tax Report. Reports confirming the reviews and summarizing changes shall be submitted to Metro by May 31 and November 30, 2010.</p>
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8	COMPLIANCE WITH LAW
	<p>Licensee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders, and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.05 whether or not those provisions have been specifically mentioned or cited herein. All conditions imposed on the collection and hauling of the Licensee's solid waste by federal, state, regional or local governments or agencies having jurisdiction over solid waste generated by the Licensee shall be deemed part of this license as if specifically set forth herein.</p>

9	INDEMNIFICATION
	<p>Licensee shall defend, indemnify and hold harmless Metro, its elected officials, officers, employees, agents and representatives from any and all claims, demands, damages, causes of action, or losses and expenses, or including all attorneys' fees, whether incurred before any litigation is commenced, during any litigation or on appeal, arising out of or related in any way to the issuance or administration of this non-system license or the transport and disposal of the solid waste covered by this license.</p>

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 09-4087 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO AMERICAN SANITARY SERVICE, INC. FOR DELIVERY OF PUTRESCIBLE WASTE TO THE WEST VAN MATERIALS RECOVERY CENTER AND THE CENTRAL TRANSFER AND RECYCLING CENTER

November 13, 2009

Prepared by: Warren Johnson

On December 11, 2008, the Metro Council adopted a series of resolutions that established an approach for evaluating applications and determining tonnage authorizations for certain non-system licenses (NSLs) pertaining to putrescible waste during 2009. This approach was established to manage Metro's contractual obligations especially while regional tonnage remained low and uncertain during the current economic environment. This same general approach is recommended in 2010.

Approval of Resolution No. 09-4087 will authorize the Chief Operating Officer (COO) to issue a one-year NSL, substantially similar to the proposed license attached to this resolution as Exhibit A, to American Sanitary Service, Inc. (American) authorizing the delivery of up to 3,848 tons of putrescible waste to the West Van Materials Recovery Center (WVAN) and the Central Transfer and Recycling Center (CTRC) during calendar year 2010. The applicant (American), the destination facilities (WVAN and CTRC), as well as the ultimate disposal site (Finley Buttes Landfill) are all owned by Waste Connections, Inc. (WCI), a waste management company headquartered in Folsom, California.

1. INTRODUCTION

A. Background

(1) Overview

NSLs are the main vehicles by which Metro manages its contractual obligation to deliver a minimum of 90 percent of the region's putrescible waste, that is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management. NSLs allow Metro to closely monitor and potentially guide waste flows to authorized facilities in order to comply with the contract. This approach provides for a high level of control and fast response to changes in conditions. Resolution No. 09-4087 would grant an NSL to American to deliver Metro-area putrescible waste to facilities owned by WCI located in Clark County, Washington. That is, this NSL controls a portion of the ten percent of uncommitted waste not guaranteed to Waste Management under the disposal contract. Metro Council is scheduled to consider four such NSL resolutions controlling the uncommitted ten percent. In addition to this action for American, Metro Council will consider resolutions for Arrow Sanitary Service, Inc. (Res. No. 09-4089), Crown Point Refuse, Inc. (Res. No. 09-4088), and Willamette Resources, Inc. (Res. No. 09-4090).

In 2009, the Metro Council granted one-year NSLs to each of the above referenced licensees. Each licensee received a maximum tonnage limit for the calendar year which, summed across all licenses, did not exceed 9.5 percent of the total tonnage subject to the flow guarantee based on Metro's tonnage forecast for 2009. Upon issuance of the NSLs, each licensee immediately received 50 percent of the total tonnage authorized under the license for use during the first six months of 2009. The COO then released additional tonnage, as available, to each licensee for use during the third and fourth quarters of 2009.

As discussed in the "Budget/Rate Impact" section of this staff report, the current policy of allocating the uncommitted tonnage has a rate impact of \$0.86 on Metro's tip fee. That is, Metro's transfer station customers will pay approximately \$534,000 more in calendar year 2010 than if 100 percent of the waste were delivered to a landfill owned by Waste Management. The financial impact of granting the proposed NSLs will be factored into the solid waste fund and rates budget.

(2) Design of the 2010 NSLs

For the 2010 renewal period, staff is proposing the same approach for evaluating the applications and determining the yearly tonnage authorizations that was used in 2009. In particular, staff recommends that the Metro Council again grant one-year NSLs for each of the four applicants authorizing a maximum yearly tonnage limitation for 2010. The limitation for each of the NSLs will be based on a share of the tonnage that is projected to be available for allocation during calendar year 2010 as described in Section 1A(3).

For 2010, Metro would again grant up to 9.5 percent of the available projected tonnage to those applicants that have applied to renew NSLs based on the latest tonnage forecast. If the Metro Council allocates the full 9.5 percent as proposed, then, based on the current Code requirement to consider the impact of Metro's contractual obligations when granting NSLs, Metro would not allow tonnage limit increases under these licenses, except as described in this report. Furthermore, Metro would not accept any new applications for these types of NSLs during 2010 unless additional tonnage becomes available (e.g., a significant economic upturn or a current license-holder no longer using its entire tonnage allocation). In the event that a current licensee no longer intends to use its allocation, the COO could reallocate the available tonnage to the remaining license-holders.

These renewed NSLs would authorize a maximum yearly tonnage limit which, in aggregate, would not exceed 9.5 percent of the total projected tonnage subject to the flow guarantee. However, unlike the quarterly allocations in 2009, the proposed NSLs for 2010 include yearly tonnage limits that are immediately available for use throughout the term of the license. Specifically, in 2010 each licensee will initially receive 85 percent of its portion of the total tonnage allocation as an upfront yearly tonnage limit. The remaining 15 percent of the licensee's portion would then be held in reserve which may be released by the COO, as available, by no later than November 2, 2010. The COO may adjust the licensee's yearly tonnage limit as necessary using the methodology described in Section 1A(3) of this report. Metro would enforce the yearly tonnage limit stipulated in the license.

Additionally, should economic conditions improve during the upcoming calendar year and tonnage increase above the level that was projected in Metro's latest forecast, the proposed NSL includes a growth allowance provision. This provision allows the COO to increase the yearly tonnage limit of the licensee by up to an additional five percent above the 15 percent tonnage amount held in reserve. This means that through the combination of the reserve tonnage and growth allowance conditions described above, the COO is authorized to increase the yearly tonnage limit of the proposed license by up to 20 percent without seeking further Council action.

The NSLs also authorize the COO to immediately redirect a licensee's waste to Metro Central or South Transfer Stations if necessary to prevent a violation of the disposal contract flow guarantee.

(3) Tonnage Allocation Methodology

The tonnage allocations are based on Metro's forecast of future waste that is subject to the flow guarantee under its disposal contract with Waste Management, and each licensee's share of prior waste that was

delivered to all solid waste facilities in the most recent 12-month period (October 2008 through September 2009). The details of the allocation are as follows:

- **Total Tonnage.** Metro forecasts that 809,500 tons will be subject to the flow guarantee in calendar year 2010. This number is derived from Metro's latest econometric forecasting model of the solid waste system. This model is used for all of Metro's major decisions involving solid waste tonnage including budgeting, rate setting and revenue projections. The allocation numbers are based on the most recent forecast, which was completed in November 2009 and covers the period through December 2011. Metro plans to review and update the forecast model in the first calendar quarter of 2010.
- **Reservation Tonnage.** Metro reserves a portion of the total tonnage to meet its contractual obligations under the disposal contract. For these allocations, Metro reserved 90.5 percent, which is comprised of the 90 percent flow guarantee plus a management allowance of 0.5 percent for the tonnage that would flow during a 2.6 week cycle should the redirection of the waste have to be implemented. The 2.6 weeks is comprised of a 2-week reporting lag, plus four days for notification and redirection logistics.
- **Allocable Tonnage.** 77,000 tons comprise the 9.5 percent of the 809,500 tons that are not reserved and therefore initially available to allocate among the applicants. (The 77,000 tons is rounded up to the nearest hundred tons.)
- **Licensee's Portion.** Each licensee is allocated a share of the 77,000 tons in the same proportion as the tonnage subject to the flow guarantee that the licensee actually delivered to all solid waste facilities during the most recent 12-month period (October 2008 through September 2009). For American, the share was 5.9 percent, leading to the initial recommended license authorization of up to 3,848 tons in 2010.

The following table provides a comparison of the licensees' 2009 authorizations, the tonnage requested in their renewal applications for 2010, and the proposed 2010 authorizations.

Table 1
Comparison of Solid Waste Subject to the Flow Guarantee by NSL Applicant

Licensee	2009 Original Tonnage Authorization	2009 Adjusted Tonnage Authorization	Applicants' 2010 Tonnage Requests	Solid Waste Delivered to All Facilities (Oct. 2008—Sept. 2009)		Proposed 2010 Allocations		
				Tons	Percent	Total Tons	Yearly Tonnage Limit (85%)	Licensee's Reserve Tonnage (15%)
American Res. No. 09-4087	4,842	4,583	5,194	5,729	5.9	4,527	3,848	679
Arrow Res. No. 09-4089	33,020	31,252	41,696	42,459	43.6	33,551	28,518	5,033
Crown Point Res. No. 09-4088	321	304	500	356	0.4	281	239	42
WRI Res. No. 09-4090	44,018	41,661	45,000	48,900	50.2	38,641	32,845	5,796
TOTAL	82,201	77,800	92,390	97,444	100	77,000	65,450	11,550

B. The Applicant

American is a solid waste hauler that is franchised to collect solid waste within the cities of Portland and Gresham. In December 2008, Metro granted American a one-year NSL authorizing the delivery of putrescible waste from its collection routes located inside the Metro region to WVAN and CTRC during calendar year 2009 (4,842 tons). WVAN and CTRC, both operated by Columbia Resource Company (CRC), are located within Clark County, Washington. CRC and Arrow Sanitary Service, Inc. (Arrow) are owned by WCI.

The term of American's existing NSL No. N-020-09C commenced on January 1, 2009 and is set to expire on December 31, 2009. The calendar year tonnage limitation that Metro initially established for the NSL (4,842 tons) was based on Metro's forecast, issued October 2008, of the waste that was subject to its disposal contract with Waste Management and American's share of such waste. However, actual tonnage subject to the flow guarantee had been trending about five percent below the level that Metro projected in October 2008. In September 2009, the COO amended each of these NSLs such that the fourth quarter tonnage allocations were less than initially anticipated when these licenses were issued in December 2008. In the case of American, the COO actually allocated a total of 4,583 tons of putrescible waste for 2009, based on the adjusted forecasted tonnage (259 tons less than originally authorized).

In addition, American exceeded its NSL tonnage limit for the first-half of the year which subsequently resulted in an enforcement action by Metro. WCI has verbally indicated to Metro staff that it intends to honor its NSL yearly tonnage limits in 2009 and 2010. A fuller discussion of American's tonnage limit violation is provided in Section 2B(6) of this report.

On September 17, 2009, American submitted an NSL application requesting that Metro renew its NSL in 2010 with a tonnage authorization of 5,194 tons for calendar year 2010 and 5,454 tons for 2011. This request represents an increase to the applicant's existing adjusted tonnage authorization by 611 additional tons in calendar year 2010 and 871 additional tons in 2011. However, the tonnage available for allocation to American is less than in 2009 as explained in section 1C of this report.

C. Description of the Resolution

Approval of Resolution No. 09-4087 will authorize the COO to issue a renewed NSL for 2010 that is substantially similar to the proposed NSL attached to this resolution as Exhibit A. In 2010, the applicant's total tonnage allocation is 56 tons less than the adjusted limit currently authorized under its 2009 license. The 2010 tonnage authorization is based on the methodology described above in Section 1A of this report.

Metro Code Section 5.05.025 prohibits any person from utilizing non-system facilities without an appropriate license from Metro. Section 5.05.035(c) of the Metro Code stipulates that the Metro Council shall consider certain factors when determining whether to issue NSLs. A description of these factors and the corresponding analysis of the renewal application are provided in Section 2B of this report.

Based on the information provided above and the analysis provided in Section 2B, the COO recommends that the Metro Council approve an NSL renewal for American subject to the requirements listed in Metro Code Chapter 5.05; and further subject to special conditions which are incorporated into the proposed NSL attached to this resolution as Exhibit A. The conditions in the proposed license are intended to further minimize Metro's risk of noncompliance with its disposal contract by providing Metro with additional controls for monitoring and managing the flow guarantee against the currently declining waste tonnage in the system.

The main special conditions that are included in the proposed NSL for American are described below. In particular, items (1) and (2) are new conditions that are included in all of the proposed NSLs to provide the licensees with greater tonnage certainty and flexibility, while retaining timely controls for Metro to monitor the flow guarantee and address potential economic improvement and tonnage growth during the upcoming year. Items (3) through (5) describe conditions that were carried forward from the existing license and are included in all of the proposed NSLs. Item (6) describes a condition that is unique to American.

(1) Calendar Year Tonnage Limitation

Section 2 of the proposed NSL initially authorizes American to initially deliver up to 3,848 tons of putrescible waste to WVAN and CTRC during calendar year 2010. This yearly tonnage limit is immediately available for use throughout the term of the license. The license also stipulates that, by no later than November 2, 2010, the COO may release additional tonnage and increase the licensee's limit by up to an additional 15 percent (679 tons) as available. If the COO were to release the full reserve amount provided under this proposed license, then American's yearly tonnage limit would be increased up to a total of 4,527 tons. This condition allows the COO to adjust the yearly tonnage authorization as necessary to meet Metro's contractual obligations and allows the maximum use of the licensee's available tonnage. By adopting this resolution, the Metro Council authorizes the COO to release the reserve tonnage as described above.

(2) Tonnage Authorization Growth Allowance

Section 7 of the proposed NSL stipulates that in addition to the 15 percent reserve tonnage allocation described above, the COO may increase the yearly tonnage authorization of the licensee by up to an additional five percent of its total tonnage allocation (226 tons) if such tonnage is available during the term of the license. If the COO were to grant the maximum growth allowance and release the licensee's full reserve amount (as described above), then American's yearly tonnage limit could be increased up to a total of 20 percent (4,753 tons). The COO's decision whether to grant such a growth allowance will be based on Metro's forecast of waste that is subject to the flow guarantee under its disposal contract with Waste Management. Any tonnage increases greater than twenty percent (i.e., the combined growth allowance and reserve tonnage amounts) would require Council approval. By adopting this resolution, the Metro Council authorizes the COO to determine and allocate growth allowance as described above.

(3) Term of License

Section 4 of the proposed NSL includes a one-year term, commencing on January 1, 2010, and terminating on December 31, 2010. Although renewed NSLs can be issued for up to two-year periods, a one-year term is proposed in this instance because of the continuing economic uncertainty and other factors that could reduce the amount of tonnage available for the upcoming year.

(4) Redirection of Waste Flow

Section 7 of the proposed NSL grants the COO authority to direct the licensee to deliver its waste, as covered under the license, to either the Metro Central or South Transfer Stations. The COO may determine when such redirection of waste flow is necessary. In addition, the COO may redirect waste flow upon providing the licensee with a minimum of 24 hours' written notice. By adopting this resolution, the Metro Council authorizes the COO to redirect the licensee's waste, as described above, if necessary to comply with the disposal contract flow guarantee.

(5) Weekly and Daily Reporting Requirement

As previously required, Section 6 of the proposed NSL stipulates that the licensee must maintain and report accurate records regarding the amount of waste that it delivers to the non-system facility under authority of the license. At a minimum the licensee shall transmit the required records to Metro on a monthly basis. However, the proposed NSL also stipulates that Metro may require the licensee to report such required information to Metro on a weekly or daily basis. The COO will determine when more frequent reporting is necessary. By adopting this resolution, the Metro Council authorizes the COO to immediately implement more frequent reporting requirements as needed.

(6) Collection Route Audit (Unique to American)

The applicant has hauling accounts that lie outside the Metro region. In order to route its trucks efficiently, American trucks must cross the Metro jurisdictional boundary and co-mingle in-Metro waste with a small amount of out-of-Metro waste on one collection route. In order to determine the appropriate fees and taxes owed to Metro, American and Metro have mutually agreed to a procedure whereby American performs a semi-annual review of its collection routes to determine which accounts are located within the Metro region.

Section 6 of the proposed NSL stipulates that the licensee must perform an audit of its collection routes at least twice during the calendar year and implement all necessary tonnage adjustments for reporting and the remittance of fees and taxes. Staff finds this to be a reasonable and verifiable procedure for the small amount of waste that the applicant collects from outside of the Metro region.

2. ANALYSIS/INFORMATION

A. Known Opposition

The applicant (WCI) may disagree with certain conditions and limitations included in the proposed license. American had previously requested a contested case hearing regarding the tonnage limitation initially included in its existing NSL and the subsequent third quarter modification. However, WCI has verbally agreed to comply with the NSL tonnage limits established by Metro in 2010.

There is no known opposition from other parties regarding the granting of the proposed license or its proposed conditions.

B. Legal Antecedents

Section 5.05.035(c) of the Metro Code provides that, when determining whether or not to approve an NSL application, the Metro Council shall consider the following factors to the extent relevant to such determination.

- (1) *The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which such wastes pose a future risk of environmental contamination;*

The proposed disposal sites are transfer stations that do not pose any known potential for environmental risk from wastes delivered from prior users. After processing at the transfer stations, the waste is transported via barge to Finley Buttes Landfill, located in Morrow County, Oregon. Finley Buttes Landfill is also a Metro designated facility authorized to receive non-putrescible processing residual

without the need for haulers to obtain an NSL. Other than that delivered via WVAN and CTRC, the Finley Buttes Landfill does not receive any other putrescible waste from the Metro region.

- (2) *The record of regulatory compliance of the non-system facility's owner and operator with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;*

WCI reportedly has a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

- (3) *The adequacy of operational practices and management controls at the non-system facility;*

WVAN and CTRC use operational practices and management controls that are typical of transfer stations and that Metro considers adequate for the protection of health, safety, and the environment.

- (4) *The expected impact on the region's recycling and waste reduction efforts;*

The proposed NSL covers only putrescible waste, which has little recovery or recycling potential. Thus, the waste authorized by the proposed license is not expected to impact the region's recycling and waste reduction efforts.

- (5) *The consistency of the designation with Metro's existing contractual arrangements;*

Metro has committed to deliver 90 percent of the total tons of putrescible waste that Metro delivers to general purpose landfills during the calendar year to landfills operated by Metro's waste disposal contract operator, Waste Management. This proposed NSL renewal is one of four similar licenses that will expire at the end of 2010. Provisions in the NSL allow Metro to monitor compliance with its disposal contract, as was covered in Section 1A of this report. However, see subsection (6) below.

- (6) *The record of the applicant regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;*

American exceeded its NSL tonnage limitation for the first and second quarters of calendar year 2009 by 42.53 tons (1.8 percent of the total tonnage). Metro issued an NOV to American for these violations, imposing a penalty of \$888.38. In addition to the imposition of a penalty, Metro reduced American's third quarter tonnage limit by 43 tons. American has since contested the penalty and the matter was brought to a hearing on September 28, 2009. On October 27, 2009, the Hearings Officer issued a proposed order that upheld Metro's penalty action on this matter. Either the proposed order or a settlement proposal will be presented to Council for consideration.

With the exception of the above referenced tonnage limit violation, American has not had any other significant compliance issues regarding other Metro requirements during the term of the existing NSL. However, American's owner, WCI, has a poor compliance record with respect to its affiliated hauling company, Arrow, staying within its NSL tonnage limitations. Arrow's compliance record is detailed in the staff report associated with Resolution No. 09-4089.

- (7) *Such other factors as the Chief Operating Officer deems appropriate for purposes of making such determination.*

This criterion was examined above in Sections 1A and 1C of this report.

C. Anticipated/Potential Effects

This proposed NSL is one of many action items currently under consideration by Metro which is affected by potential declines in the amount of solid waste subject to the flow guarantee. Some decisions could have the effect of shrinking the pool of waste available for allocation. For instance, increased diversion from the landfill due to higher recovery or an improved organics program with the selection of a new transfer station operator could have such an impact. Decisions on these other action items have not yet been made so their potential impact on tonnage is not fully known at this point. The forecast of waste subject to the flow guarantee, which is the basis for the NSL tonnage authorizations, incorporates the best available information as of this writing.

Additionally, in 2009 staff noted that the granting of these types of NSLs had a potential financial impact on the regional solid waste system ratepayers through a “rate matching” effect. That is, Metro’s tip fee is generally matched by private solid waste facilities in the region which results in increased costs to customers of private facilities. However, it appears that this rate matching effect will not be a factor in 2010. In 2009, Metro Council decided to limit Metro’s 2010 rate increase at its transfer stations through a variety of methods (e.g., using reserve funds). Because of this decision, most privately-owned transfer stations now have tip fees above that of the current Metro rate; thus, mitigating the impact of rate matching in 2010.

D. Budget/Rate Impacts

As is generally known, the price that Metro pays for disposal at Columbia Ridge Landfill is a “declining block rate” — meaning that the more waste that is delivered to any landfill owned by Waste Management, the lower the per-ton cost paid by Metro. Based on projected tonnage and contract prices, allocating the uncommitted 77,000 tons to non-Waste Management landfills increases the Metro tip fee by \$0.86. Metro customers will pay \$534,000 more for disposal than if all of the uncommitted waste were to flow to Waste Management landfills. The practice of issuing these types of NSLs has been occurring under the Council’s direction for the past nine years.

The Metro Regional System Fee and Excise Tax will continue to be collected on all waste delivered under authority of the proposed NSL. The application under consideration is the renewal of an existing NSL (No. N-020-09C). Therefore, the financial impact has already been factored into the budget.

3. RECOMMENDED ACTION

Based on the information provided in this report, the COO recommends approval of Resolution No. 09-4087, finding that the proposed license satisfies the requirements of Metro Code Section 5.05.035, and renewal of an NSL substantially similar to the proposed NSL attached to the resolution as Exhibit A.

WJ:bjl
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Agenda Item Number 3.3

Resolution No. 09-4088, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to Crown Point Refuse, Inc. for Delivery of Putrescible Waste to the Wasco County Landfill

Consent Agenda

Metro Council Meeting
Thursday, December 10, 2009
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER) RESOLUTION NO. 09-4088
TO ISSUE A RENEWED NON-SYSTEM LICENSE TO)
CROWN POINT REFUSE, INC. FOR DELIVERY OF) Introduced by Michael Jordan,
PUTRESCIBLE WASTE TO THE WASCO COUNTY) Chief Operating Officer, with the
LANDFILL) concurrence of David Bragdon,
) Council President

WHEREAS, the Metro Code requires a non-system license of any person that delivers solid waste generated from within the Metro Region to a non-system disposal facility; and

WHEREAS, Crown Point Refuse, Inc. ("Crown Point") holds Metro Solid Waste Facility Non-System License No. N-108-09B, which expires on December 31, 2009; and

WHEREAS, Crown Point has filed a completed application seeking renewal of the non-system license to deliver putrescible waste to the Wasco County Landfill for disposal under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control;" and

WHEREAS, the Metro Code Chapter provides that applications for non-system licenses for putrescible waste shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council; and

WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors under the Metro Code; and

WHEREAS, the Chief Operating Officer recommends that the non-system license be renewed together with specific conditions as provided in Exhibit A to this Resolution; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The non-system license renewal application of Crown Point is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. The Chief Operating Officer is authorized to issue to Crown Point a renewed Solid Waste Facility Non-System License substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this ____ day of _____, 2009.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

Resolution No. 09-4088

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600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1835 | FAX 503 813 7544



METRO

**METRO SOLID WASTE FACILITY
NON-SYSTEM LICENSE**

No. N-108-10

LICENSEE:

Crown Point Refuse, Inc.
2430 NW Marine Drive
Troutdale, OR 97060

CONTACT PERSON:

Randall Burbach
Phone: (503) 695-3239
Fax: (503) 661-7216
E-mail: crownpointrefuse@verizon.net

MAILING ADDRESS:

Crown Point Refuse, Inc.
PO Box 360
Corbett, OR 97019

ISSUED BY METRO:

Michael Jordan, Chief Operating Officer

Date



1	NATURE OF WASTE COVERED BY LICENSE
	Putrescible solid waste that is generated by residential and commercial customers within the Metro region and collected by Crown Point Refuse, Inc.
2	CALENDAR YEAR TONNAGE LIMITATION
	<p>(a) Licensee is authorized to deliver to the non-system facility described in Section 3 of this license up to 239 tons per calendar year of the waste described in Section 1.</p> <p>(b) By no later than November 2, 2010, Metro's Chief Operating Officer ("COO") may release additional reserve tonnage and amend this license to adjust the calendar tonnage limitation as established by Metro Council and described in the staff report to Resolution No. 09-4088.</p>
3	NON-SYSTEM FACILITY
	<p>The Licensee hereunder is authorized to deliver the waste described above in Section 1 to the following non-system facility:</p> <p style="text-align: center;">Wasco County Landfill 2550 Steele Road The Dalles, OR 97058</p> <p>This license is issued on condition that the non-system facility named in this section is authorized to accept the type of waste described in Section 1. If Metro receives notice from the Oregon Department of Environmental Quality or local regulatory authority that this non-system facility is not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 7 of this license.</p>
4	TERM OF LICENSE
	The term of this license will commence on January 1, 2010 and expire at midnight on December 31, 2010, unless terminated sooner under Section 7 of this license.



5	REPORTING OF ACCIDENTS AND CITATIONS
	Licensee shall report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles transporting the solid waste authorized by this license.

6	Record Keeping and Reporting
	<p>(a) The Licensee shall keep and maintain accurate records of the amount of all solid waste that the Licensee delivers to the non-system facility described in Section 3 of this license. The Licensee shall keep and maintain complete and accurate records of the following for all transactions with the authorized non-system facility:</p> <ul style="list-style-type: none">i. Ticket or weight slip number from the non-system facility;ii. Material category designating the type of material transferred to the non-system facility;iii. Date the load was transferred to the non-system facility;iv. Time the load was transferred to the non-system facility;v. Net weight of the load; andvi. Fee charged by the non-system facility <p>(b) No later than the fifteenth (15th) day of each month, beginning with the first month following the commencement date of this license, Licensee shall:</p> <ul style="list-style-type: none">i. Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; andii. Remit to Metro the requisite Regional System Fees and Excise Tax in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes. <p>(c) Licensee shall make all records from which Sections 6(a) and 6(b) above are derived available to Metro (or Metro's designated agent) for its inspection or copying, as long as Metro provides no less than three (3) business days written notice of an intent to inspect or copy documents. Licensee shall, in addition, sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system facility named in Section 3, above.</p> <p>(d) Metro may require the Licensee to report the information required by this Section on a weekly or daily basis.</p> <p>(e) At least once per calendar year, Licensee shall sample the weight of the waste it collects from within the Metro region for at least two consecutive</p>



weeks. The samples will be used as a basis for reporting the tonnage on the Licensee's Regional System Fee and Excise Tax Report.

7

ADDITIONAL LICENSE CONDITIONS

This license shall be subject to the following conditions:

- (a) The permissive transfer of solid waste to the non-system facility, listed in Section 3, authorized by this license shall be subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.
- (b) In addition to the amendments by the COO authorized by Section 2 of this license, this license shall be subject to amendment, modification, or termination by the COO in the event that the COO determines that:
 - i. There has been sufficient change in any circumstances under which Metro issued this license;
 - ii. The provisions of this license are actually or potentially in conflict with any provision in Metro's disposal contract with Waste Management Disposal Services of Oregon, Inc., dba Oregon Waste Systems, Inc.;
 - iii. Metro's solid waste system or the public will benefit from, and will be better served by, an order directing that the waste described in Section 1 of this license be transferred to, and disposed of at, a facility other than the facility listed in Section 3; or
 - iv. There has been sufficient change in the amount of tonnage available for allocation during the term of the license. In the event that additional tonnage becomes available for allocation, the COO may amend Section 2(a) of this license to increase the calendar year tonnage limitation by up to five percent in addition to the reserve tonnage amount described in Section 2(b).
- (c) This license shall, in addition to subsections (b)(i) through (b)(iv), above, be subject to amendment, modification, suspension, or termination pursuant to the Metro Code.
- (d) The Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.
- (e) This license shall terminate upon the execution of a designated facility agreement with the facility listed in Section 3 that authorizes the facility to accept the waste described in Section 1 of this license.
- (f) This license authorizes the delivery of solid waste to the facility listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than that specified in this license is prohibited unless authorized in writing by Metro.
- (g) The COO may direct the Licensee's waste flow under this non-system license to Metro Central Transfer Station or Metro South Transfer Station



	<p>with a minimum of 24 hours' written notice. Any redirection of the waste flow by the COO is effective immediately.</p> <p>(h) If the Licensee exceeds the calendar year limitation set forth in Section 2 of this license, each ton or portion thereof by which the Licensee exceeds the limitation constitutes a separate violation subject to a penalty of up to \$500.</p>
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8	COMPLIANCE WITH LAW
	<p>Licensee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders, and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.05 whether or not those provisions have been specifically mentioned or cited herein. All conditions imposed on the collection and hauling of the Licensee's solid waste by federal, state, regional or local governments or agencies having jurisdiction over solid waste generated by the Licensee shall be deemed part of this license as if specifically set forth herein.</p>

9	INDEMNIFICATION
	<p>Licensee shall defend, indemnify and hold harmless Metro, its elected officials, officers, employees, agents and representatives from any and all claims, demands, damages, causes of action, or losses and expenses, or including all attorneys' fees, whether incurred before any litigation is commenced, during any litigation or on appeal, arising out of or related in any way to the issuance or administration of this non-system license or the transport and disposal of the solid waste covered by this license.</p>

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 09-4088 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO CROWN POINT REFUSE, INC. FOR DELIVERY OF PUTRESCIBLE WASTE TO THE WASCO COUNTY LANDFILL

November 13, 2009

Prepared by: Warren Johnson

On December 11, 2008, the Metro Council adopted a series of resolutions that established an approach for evaluating applications and determining tonnage authorizations for certain non-system licenses (NSLs) pertaining to putrescible waste during 2009. This approach was established to manage Metro's contractual obligations especially while regional tonnage remained low and uncertain during the current economic environment. This same general approach is recommended in 2010.

Approval of Resolution No. 09-4088 will authorize the Chief Operating Officer (COO) to issue a one-year NSL, substantially similar to the proposed license attached to this resolution as Exhibit A, to Crown Point Refuse, Inc. (Crown Point) authorizing the delivery of up to 239 tons of putrescible waste to the Wasco County Landfill (WCL) during calendar year 2010.

1. INTRODUCTION

A. Background

(1) Overview

NSLs are the main vehicles by which Metro manages its contractual obligation to deliver a minimum of 90 percent of the region's putrescible waste, that is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management. NSLs allow Metro to closely monitor and potentially guide waste flows to authorized facilities in order to comply with the contract. This approach provides for a high level of control and fast response to changes in conditions. Resolution No. 09-4088 would grant an NSL to Crown Point to deliver Metro-area putrescible waste to a disposal site owned by Waste Connections, Inc. located in Wasco County, Oregon. That is, this NSL controls a portion of the ten percent of uncommitted waste not guaranteed to Waste Management under the disposal contract. Metro Council is scheduled to consider four such NSL resolutions controlling the uncommitted ten percent. In addition to this action for Crown Point, Metro Council will consider resolutions for American Sanitary Service, Inc. (Res. No. 09-4087), Arrow Sanitary Service, Inc. (Res. No. 09-4089), and Willamette Resources, Inc. (Res. No. 09-4090).

In 2009, the Metro Council granted one-year NSLs to each of the above referenced licensees. Each licensee received a maximum tonnage limit for the calendar year which, summed across all licenses, did not exceed 9.5 percent of the total tonnage subject to the flow guarantee based on Metro's tonnage forecast for 2009. Upon issuance of the NSLs, each licensee immediately received 50 percent of the total tonnage authorized under the license for use during the first six months of 2009. The COO then released additional tonnage, as available, to each licensee for use during the third and fourth quarters of 2009.

As discussed in the "Budget/Rate Impact" section of this staff report, the current policy of allocating the uncommitted tonnage has a rate impact of \$0.86 on Metro's tip fee. That is, Metro's transfer station customers will pay approximately \$534,000 more in calendar year 2010 than if 100 percent of the waste were delivered to a landfill owned by Waste Management. The financial impact of granting the proposed NSLs will be factored into the solid waste fund and rates budget.

(2) Design of the 2010 NSLs

For the 2010 renewal period, staff is proposing the same approach for evaluating the applications and determining the yearly tonnage authorizations that was used in 2009. In particular, staff recommends that the Metro Council again grant one-year NSLs for each of the four applicants authorizing a maximum yearly tonnage limitation for 2010. The limitation for each of the NSLs will be based on a share of the tonnage that is projected to be available for allocation during calendar year 2010 as described in Section 1A(3).

For 2010, Metro would again grant up to 9.5 percent of the available projected tonnage to those applicants that have applied to renew NSLs based on the latest tonnage forecast. If the Metro Council allocates the full 9.5 percent as proposed, then, based on the *current* Code requirement to consider the impact of Metro's contractual obligations when granting NSLs, Metro would not allow tonnage limit increases under these licenses, except as described in this report. Furthermore, Metro would not accept any new applications for these types of NSLs during 2010 unless additional tonnage becomes available (e.g., a significant economic upturn or a current license-holder no longer using its entire tonnage allocation). In the event that a current licensee no longer intends to use its allocation, the COO could reallocate the available tonnage to the remaining license-holders.

These renewed NSLs would authorize a maximum yearly tonnage limit which, in aggregate, would not exceed 9.5 percent of the total projected tonnage subject to the flow guarantee. However, unlike the quarterly allocations in 2009, the proposed NSLs for 2010 include yearly tonnage limits that are immediately available for use throughout the term of the license. Specifically, in 2010 each licensee will initially receive 85 percent of its portion of the total tonnage allocation as an upfront yearly tonnage limit. The remaining 15 percent of the licensee's portion would then be held in reserve which may be released by the COO, as available, by no later than November 2, 2010. The COO may adjust the licensee's yearly tonnage limit as necessary using the methodology described in Section 1A(3) of this report. Metro would enforce the yearly tonnage limit stipulated in the license.

Additionally, should economic conditions improve during the upcoming calendar year and tonnage increase above the level that was projected in Metro's latest forecast, the proposed NSL includes a growth allowance provision. This provision allows the COO to increase the yearly tonnage limit of the licensee by up to an additional five percent above the 15 percent tonnage amount held in reserve. This means that through the combination of the reserve tonnage and growth allowance conditions described above, the COO is authorized to increase the yearly tonnage limit of the proposed license by up to 20 percent without seeking further Council action.

The NSLs also authorize the COO to immediately redirect a licensee's waste to Metro Central or South Transfer Stations if necessary to prevent a violation of the disposal contract flow guarantee.

(3) Tonnage Allocation Methodology

The tonnage allocations are based on Metro's forecast of future waste that is subject to the flow guarantee under its disposal contract with Waste Management, and each licensee's share of prior waste that was delivered to all solid waste facilities in the most recent 12-month period (October 2008 through September 2009). The details of the allocation are as follows:

- *Total Tonnage.* Metro forecasts that 809,500 tons will be subject to the flow guarantee in calendar year 2010. This number is derived from Metro's latest econometric forecasting model of the solid waste system. This model is used for all of Metro's major decisions involving solid

waste tonnage including budgeting, rate setting and revenue projections. The allocation numbers are based on the most recent forecast, which was completed in November 2009 and covers the period through December 2011. Metro plans to review and update the forecast model in the first calendar quarter of 2010.

- *Reservation Tonnage.* Metro reserves a portion of the total tonnage to meet its contractual obligations under the disposal contract. For these allocations, Metro reserved 90.5 percent, which is comprised of the 90 percent flow guarantee plus a management allowance of 0.5 percent for the tonnage that would flow during a 2.6 week cycle should the redirection of the waste have to be implemented. The 2.6 weeks is comprised of a 2-week reporting lag, plus four days for notification and redirection logistics.
- *Allocable Tonnage.* 77,000 tons comprise the 9.5 percent of the 809,500 tons that are not reserved and therefore initially available to allocate among the applicants. (The 77,000 tons is rounded up to the nearest hundred tons.)
- *Licensee's Portion.* Each licensee is allocated a share of the 77,000 tons in the same proportion as the tonnage subject to the flow guarantee that the licensee actually delivered to all solid waste facilities during the most recent 12-month period (October 2008 through September 2009). For Crown Point, the share was 0.4 percent, leading to the initial recommended license authorization of up to 239 tons in 2010.

The following table provides a comparison of the licensees' 2009 authorizations, the tonnage requested in their renewal applications for 2010, and the proposed 2010 authorizations.

Table 1
Comparison of Solid Waste Subject to the Flow Guarantee by NSL Applicant

Licensee	2009 Original Tonnage Authorization	2009 Adjusted Tonnage Authorization	Applicants' 2010 Tonnage Requests	Solid Waste Delivered to All Facilities (Oct. 2008—Sept. 2009)		Proposed 2010 Allocations		
				Tons	Percent	Total Tons	Yearly Tonnage Limit (85%)	Licensee's Reserve Tonnage (15%)
American Res. No. 09-4087	4,842	4,583	5,194	5,729	5.9	4,527	3,848	679
Arrow Res. No. 09-4089	33,020	31,252	41,696	42,459	43.6	33,551	28,518	5,033
Crown Point Res. No. 09-4088	321	304	500	356	0.4	281	239	42
WRI Res. No. 09-4090	44,018	41,661	45,000	48,900	50.2	38,641	32,845	5,796
TOTAL	82,201	77,800	92,390	97,444	100	77,000	65,450	11,550

B. The Applicant

The applicant, Crown Point, collects waste at a residential area located east of Troutdale, Oregon (along the eastern boundary of the Metro region). The majority of the applicant's hauling accounts lie outside the Metro region. In order to route its trucks efficiently, Crown Point's trucks must cross the Metro jurisdictional boundary and co-mingle in-Metro waste with out-of-Metro waste.

In December 2008, Metro granted Crown Point a one-year NSL authorizing the delivery of putrescible waste from its collection routes located inside the Metro region to WCL during calendar year 2009 (321 tons). WCL is located in Wasco County near The Dalles, Oregon.

The term of Crown Point's existing NSL No. N-108-09B commenced on January 1, 2009 and is set to expire on December 31, 2009. The calendar year tonnage limitation that Metro initially established for the NSL (321 tons) was based on Metro's forecast, issued October 2008, of the waste that was subject to its disposal contract with Waste Management and Crown Point's share of such waste. However, actual tonnage subject to the flow guarantee had been trending about five percent below the level that Metro projected in October 2008. In September 2009, the COO amended each of these NSLs such that the fourth quarter tonnage allocations were less than initially anticipated when these licenses were issued in December 2008. In the case of Crown Point, the COO actually allocated a total of 304 tons of putrescible waste for 2009, based on the adjusted forecasted tonnage (17 tons less than originally authorized).

On September 15, 2009, Crown Point submitted an NSL application requesting that Metro renew its NSL in 2010 with a tonnage authorization of 500 tons. This request represents an increase to the applicant's existing adjusted tonnage authorization by 196 additional tons in calendar year 2010. However, the tonnage available for allocation to Crown Point is less than in 2009 as explained in section 1C of this report.

C. Description of the Resolution

Approval of Resolution No. 09-4088 will authorize the COO to issue a renewed NSL for 2010 that is substantially similar to the proposed NSL attached to this resolution as Exhibit A. In 2010, the applicant's total tonnage allocation is 23 tons less than the adjusted limit currently authorized under its 2009 license. The 2010 tonnage authorization is based on the methodology described above in Section 1A of this report.

Metro Code Section 5.05.025 prohibits any person from utilizing non-system facilities without an appropriate license from Metro. Section 5.05.035(c) of the Metro Code stipulates that the Metro Council shall consider certain factors when determining whether to issue NSLs. A description of these factors and the corresponding analysis of the renewal application are provided in Section 2B of this report.

Based on the information provided above and the analysis provided in Section 2B, the COO recommends that the Metro Council approve an NSL renewal for Crown Point subject to the requirements listed in Metro Code Chapter 5.05; and further subject to special conditions which are incorporated into the proposed NSL attached to this resolution as Exhibit A. The conditions in the proposed license are intended to further minimize Metro's risk of noncompliance with its disposal contract by providing Metro with additional controls for monitoring and managing the flow guarantee against the currently declining waste tonnage in the system.

The main special conditions that are included in the proposed NSL for Crown Point are described below. In particular, items (1) and (2) are new conditions that are included in all of the proposed NSLs to provide

the licensees with greater tonnage certainty and flexibility, while retaining timely controls for Metro to monitor the flow guarantee and address potential economic improvement and tonnage growth during the upcoming year. Items (3) through (5) describe conditions that were carried forward from the existing license and are included in all of the proposed NSLs. Item (6) also describes a condition that was carried forward from the existing license; however, this condition is unique to Crown Point.

(1) Calendar Year Tonnage Limitation

Section 2 of the proposed NSL authorizes Crown Point to initially deliver up to 239 tons of putrescible waste to WCL during calendar year 2010. This yearly tonnage limit is immediately available for use throughout the term of the license. The license also stipulates that, by no later than November 2, 2010, the COO may release additional tonnage and increase the licensee's limit by up to an additional 15 percent (42 tons) as available. If the COO were to release the full reserve amount provided under this proposed license, then Crown Point's yearly tonnage limit would be increased up to a total of 281 tons. This condition allows the COO to adjust the yearly tonnage authorization as necessary to meet Metro's contractual obligations and allows the maximum use of the licensee's available tonnage. By adopting this resolution, the Metro Council authorizes the COO to release the reserve tonnage as described above.

(2) Tonnage Authorization Growth Allowance

Section 7 of the proposed NSL stipulates that in addition to the 15 percent reserve tonnage allocation described above, the COO may increase the yearly tonnage authorization of the licensee by up to an additional five percent of its total tonnage allocation (14 tons) if such tonnage is available during the term of the license. If the COO were to grant the maximum growth allowance and release the licensee's full reserve amount (as described above), then Crown Point's yearly tonnage limit could be increased up to a total of 20 percent (295 tons). The COO's decision whether to grant such a growth allowance will be based on Metro's forecast of waste that is subject to the flow guarantee under its disposal contract with Waste Management. Any tonnage increases greater than twenty percent (i.e., the combined growth allowance and reserve tonnage amounts) would require Council approval. By adopting this resolution, the Metro Council authorizes the COO to determine and allocate growth allowance as described above.

(3) Term of License

Section 4 of the proposed NSL includes a one-year term, commencing on January 1, 2010, and terminating on December 31, 2010. Although renewed NSLs can be issued for up to two-year periods, a one-year term is proposed in this instance because of the continuing economic uncertainty and other factors that could reduce the amount of tonnage available for the upcoming year.

(4) Redirection of Waste Flow

Section 7 of the proposed NSL grants the COO authority to direct the licensee to deliver its waste, as covered under the license, to either the Metro Central or South Transfer Stations. The COO may determine when such redirection of waste flow is necessary. In addition, the COO may redirect waste flow upon providing the licensee with a minimum of 24 hours' written notice. By adopting this resolution, the Metro Council authorizes the COO to redirect the licensee's waste, as described above, if necessary to comply with the disposal contract flow guarantee.

(5) Weekly and Daily Reporting Requirement

As previously required, Section 6 of the proposed NSL stipulates that the licensee must maintain and report accurate records regarding the amount of waste that it delivers to the non-system facility under

authority of the license. At a minimum the licensee shall transmit the required records to Metro on a monthly basis. However, the proposed NSL also stipulates that Metro may require the licensee to report such required information to Metro on a weekly or daily basis. The COO will determine when more frequent reporting is necessary. By adopting this resolution, the Metro Council authorizes the COO to immediately implement more frequent reporting requirements as needed.

(6) Sample Weights (Unique to Crown Point)

The majority of the applicant's hauling accounts lie outside the Metro region. In order to route its trucks efficiently, Crown Point's trucks must cross the Metro jurisdictional boundary and co-mingle in-Metro waste with out-of-Metro waste. In order to determine the appropriate fees and taxes owed to Metro, Crown Point and Metro have mutually agreed to an estimation method whereby Crown Point reports an average monthly tonnage determined by weight studies it performs.

Section 6 of the proposed NSL stipulates that the licensee must sample the weight of the waste it collects from inside the Metro region for a period of two consecutive weeks in order to determine the monthly average used for reporting and the remittance of fees and taxes. Staff finds this to be a reasonable and verifiable procedure for the small amount of waste covered by this NSL.

2. ANALYSIS/INFORMATION

A. Known Opposition

There is no known opposition to the proposed license renewal.

B. Legal Antecedents

Section 5.05.035(c) of the Metro Code provides that, when determining whether or not to approve an NSL application, the Metro Council shall consider the following factors to the extent relevant to such determination.

- (1) *The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which such wastes pose a future risk of environmental contamination;*

WCL, located in Wasco County, first came into use during the 1940s by area farmers. A tepee burner was added in the 1950s with the ash going into a canyon that was closed and capped in the early 1970s. The Oregon Department of Environmental Quality (DEQ) first permitted and began regulating the site in 1972. Presently, 213 acres are permitted of which 78 acres are dedicated to closed or active cells. The landfill is sited in a low rainfall area and has the environmental controls required by the DEQ for a Subtitle D landfill. Metro staff is not aware of any waste types accepted at the landfill that would pose an unusual risk of future environmental contamination. WCL is already a Metro designated facility authorized to receive non-putrescible solid waste without the need for haulers to obtain NSLs.

- (2) *The record of regulatory compliance of the non-system facility's owner and operator with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;*

WCL has been owned and operated by Waste Connections, Inc. since 1999. The company also operates the Finley Buttes Landfill, two transfer stations located in Clark County, Washington, and several

franchised hauling companies within the Metro region. Waste Connections, Inc. has a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

WCL is permitted by the DEQ. In November 2008, Metro staff received verbal confirmation from Joe Gingerich, DEQ, and Glen Pierce, Wasco County Health Department, that WCL is in compliance with federal, state and local requirements and the facility has a good compliance record with public health, safety and environmental rules and regulations.

- (3) *The adequacy of operational practices and management controls at the non-system facility;*

WCL uses operational practices and management controls that are typical of Subtitle D landfills and considered by the DEQ to be adequate for the protection of the health, safety, and the environment. The landfill's DEQ permit, along with the details of its waste screening, operations, closure, and special waste handling procedures have been reviewed and are on file with Metro.

- (4) *The expected impact on the region's recycling and waste reduction efforts;*

The proposed NSL covers only putrescible waste, which has little recovery or recycling potential. Thus, the waste authorized by the proposed license is not expected to impact the region's recycling and waste reduction efforts.

- (5) *The consistency of the designation with Metro's existing contractual arrangements;*

Metro has committed to deliver 90 percent of the total tons of putrescible waste that Metro delivers to general purpose landfills during the calendar year to landfills operated by Metro's waste disposal contract operator, Waste Management. This proposed NSL renewal is one of four similar licenses that will expire at the end of 2010. Provisions in the NSL allow Metro to monitor compliance with its disposal contract, as was covered in Section 1A of this report.

- (6) *The record of the applicant regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;*

The applicant is a waste hauling company that operates under local requirements within eastern Multnomah County and has a good record of compliance with public health, safety and environmental rules and regulations.

Crown Point is currently in compliance with its NSL. Crown Point has not had any significant compliance issues regarding other Metro requirements during the term of the existing NSL.

- (7) *Such other factors as the Chief Operating Officer deems appropriate for purposes of making such determination.*

This criterion was examined above in Sections 1A and 1C of this report.

C. Anticipated/Potential Effects

This proposed NSL is one of many action items currently under consideration by Metro which is affected by potential declines in the amount of solid waste subject to the flow guarantee. Some decisions could have the effect of shrinking the pool of waste available for allocation. For instance, increased diversion from the landfill due to higher recovery or an improved organics program with the selection of a new transfer station operator could have such an impact. Decisions on these other action items have not yet been made so their potential impact on tonnage is not fully known at this point. The forecast of waste subject to the flow guarantee, which is the basis for the NSL tonnage authorizations, incorporates the best available information as of this writing.

Additionally, in 2009 staff noted that the granting of these types of NSLs had a potential financial impact on the regional solid waste system ratepayers through a “rate matching” effect. That is, Metro’s tip fee is generally matched by private solid waste facilities in the region which results in increased costs to customers of private facilities. However, it appears that this rate matching effect will not be a factor in 2010. In 2009, Metro Council decided to limit Metro’s 2010 rate increase at its transfer stations through a variety of methods (e.g., using reserve funds). Because of this decision, most privately-owned transfer stations now have tip fees above that of the current Metro rate; thus, mitigating the impact of rate matching in 2010.

D. Budget/Rate Impacts

As is generally known, the price that Metro pays for disposal at Columbia Ridge Landfill is a “declining block rate” — meaning that the more waste that is delivered to any landfill owned by Waste Management, the lower the per-ton cost paid by Metro. Based on projected tonnage and contract prices, allocating the uncommitted 77,000 tons to non-Waste Management landfills increases the Metro tip fee by \$0.86. Metro customers will pay \$534,000 more for disposal than if all of the uncommitted waste were to flow to Waste Management landfills. The practice of issuing these types of NSLs has been occurring under the Council’s direction for the past nine years.

The Metro Regional System Fee and Excise Tax will continue to be collected on all waste delivered under authority of the proposed NSL. The application under consideration is the renewal of an existing NSL (No. N-108-09B). Therefore, the financial impact has already been factored into the budget.

3. RECOMMENDED ACTION

Based on the information provided in this report, the COO recommends approval of Resolution No. 09-4088, finding that the proposed license satisfies the requirements of Metro Code Section 5.05.035, and renewal of an NSL substantially similar to the proposed NSL attached to the resolution as Exhibit A.

WJ:bjl
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Agenda Item Number 3.4

Resolution No. 09-4089, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to Arrow Sanitary Service, Inc. for Delivery of Putrecible Waste to the West Van Materials Recovery Center and the Central Transfer and Recycling Center

Consent Agenda

Metro Council Meeting
Thursday, December 10, 2009
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER) RESOLUTION NO. 09-4089
TO ISSUE A RENEWED NON-SYSTEM LICENSE TO)
ARROW SANITARY SERVICE, INC. FOR) Introduced by Michael Jordan,
DELIVERY OF PUTRESCIBLE WASTE TO THE) Chief Operating Officer, with the
WEST VAN MATERIALS RECOVERY CENTER) concurrence of David Bragdon,
AND THE CENTRAL TRANSFER AND RECYCLING) Council President
CENTER)

WHEREAS, the Metro Code requires a non-system license of any person that delivers solid waste generated from within the Metro Region to a non-system disposal facility; and

WHEREAS, Arrow Sanitary Service, Inc. ("Arrow") holds Metro Solid Waste Facility Non-System License No. N-029-09C, which expires on December 31, 2009; and

WHEREAS, Arrow has filed a completed application seeking renewal of the non-system license to deliver putrescible waste to the West Van Materials Recovery Center and the Central Transfer and Recycling Center for disposal under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control;" and

WHEREAS, the Metro Code Chapter provides that applications for non-system licenses for putrescible waste shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council; and

WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors under the Metro Code; and

WHEREAS, the Chief Operating Officer recommends that the non-system license be renewed together with specific conditions as provided in Exhibit A to this Resolution; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The non-system license renewal application of Arrow is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. The Chief Operating Officer is authorized to issue to Arrow a renewed Solid Waste Facility Non-System License substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this ____ day of _____, 2009.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

Resolution No. 09-4089

WJ:bjl
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600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1835 | FAX 503 813 7544



METRO

**METRO SOLID WASTE FACILITY
NON-SYSTEM LICENSE**

No. N-029-10

LICENSEE:

Arrow Sanitary Service, Inc.
12820 NE Marx Street
Portland, OR 97230

CONTACT PERSON:

	Jason Craft	Dean Large
Phone:	(503) 251-1308	(360) 695-4858
Fax:	(503) 257-8699	(360) 695-5091
E-Mail:	jasoncr@wcnx.org	deanl@wcnx.org

MAILING ADDRESS:

Arrow Sanitary Service, Inc.
12820 NE Marx Street
Portland, OR 97230

ISSUED BY METRO:

Michael Jordan, Chief Operating Officer

Date



1	NATURE OF WASTE COVERED BY LICENSE
	Putrescible solid waste that is generated by residential and commercial customers within the Metro region and collected by Arrow Sanitary Service, Inc.
2	CALENDAR YEAR TONNAGE LIMITATION
	<p>(a) Licensee is authorized to deliver to the non-system facilities described in Section 3 of this license up to 28,518 tons per calendar year of the waste described in Section 1.</p> <p>(b) By no later than November 2, 2010, Metro's Chief Operating Officer ("COO") may release additional reserve tonnage and amend this license to adjust the calendar tonnage limitation as established by Metro Council and described in the staff report to Resolution No. 09-4089.</p>
3	NON-SYSTEM FACILITIES
	<p>The Licensee hereunder is authorized to deliver the waste described above in Section 1 to the following non-system facilities:</p> <p>West Van Materials Recovery Center 6601 NW Old Lower River Road Vancouver, WA 98660</p> <p>Central Transfer and Recycling Center 11034 NE 117th Avenue Vancouver, WA 98661</p> <p>This license is issued on condition that the non-system facilities named in this section are authorized to accept the type of waste described in Section 1. If Metro receives notice from Clark County or other appropriate regulatory authority that these non-system facilities are not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 7 of this license.</p>
4	TERM OF LICENSE
	The term of this license will commence on January 1, 2010 and expire at midnight on December 31, 2010, unless terminated sooner under Section 7 of this license.



5	REPORTING OF ACCIDENTS AND CITATIONS
	Licensee shall report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles transporting the solid waste authorized by this license.

6	Record Keeping and Reporting
	<p>(a) The Licensee shall keep and maintain accurate records of the amount of all solid waste that the Licensee delivers to the non-system facilities described in Section 3 of this license. The Licensee shall keep and maintain complete and accurate records of the following for all transactions with the authorized non-system facilities:</p> <ul style="list-style-type: none">i. Ticket or weight slip number from the non-system facility;ii. Material category designating the type of material transferred to the non-system facility;iii. Date the load was transferred to the non-system facility;iv. Time the load was transferred to the non-system facility;v. Net weight of the load; andvi. Fee charged by the non-system facility <p>(b) No later than the fifteenth (15th) day of each month, beginning with the first month following the commencement date of this license, Licensee shall:</p> <ul style="list-style-type: none">i. Transmit the records required under Section 6(a) above to Metro in an electronic format prescribed by Metro;ii. Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; andiii. Remit to Metro the requisite Regional System Fees and Excise Tax in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes. <p>(c) Licensee shall make all records from which Sections 6(a) and 6(b) above are derived available to Metro (or Metro's designated agent) for its inspection or copying, as long as Metro provides no less than three (3) business days written notice of an intent to inspect or copy documents. Licensee shall, in addition, sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system facilities named in Section 3, above.</p> <p>(d) Metro may require the Licensee to report the information required by this</p>



Section on a weekly or daily basis.

7	ADDITIONAL LICENSE CONDITIONS
	<p>This license shall be subject to the following conditions:</p> <ul style="list-style-type: none">(a) The permissive transfer of solid waste to the non-system facilities, listed in Section 3, authorized by this license shall be subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.(b) In addition to the amendments by the COO authorized by Section 2 of this license, this license shall be subject to amendment, modification, or termination by the COO in the event that the COO determines that:<ul style="list-style-type: none">i. There has been sufficient change in any circumstances under which Metro issued this license;ii. The provisions of this license are actually or potentially in conflict with any provision in Metro's disposal contract with Waste Management Disposal Services of Oregon, Inc., dba Oregon Waste Systems, Inc.;iii. Metro's solid waste system or the public will benefit from, and will be better served by, an order directing that the waste described in Section 1 of this license be transferred to, and disposed of at, a facility other than the facilities listed in Section 3; oriv. There has been sufficient change in the amount of tonnage available for allocation during the term of the license. In the event that additional tonnage becomes available for allocation, the COO may amend Section 2(a) of this license to increase the calendar year tonnage limitation by up to five percent in addition to the reserve tonnage amount described in Section 2(b).(c) This license shall, in addition to subsections (b)(i) through (b)(iv), above, be subject to amendment, modification, suspension, or termination pursuant to the Metro Code.(d) The Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.(e) This license shall terminate upon the execution of designated facility agreements with the facilities listed in Section 3 that authorizes the facilities to accept the waste described in Section 1 of this license.(f) This license authorizes the delivery of solid waste to the facilities listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than that specified in this license is prohibited unless authorized in writing by Metro.(g) The COO may direct the Licensee's waste flow under this non-system license to Metro Central Transfer Station or Metro South Transfer Station



	<p>with a minimum of 24 hours' written notice. Any redirection of the waste flow by the COO is effective immediately.</p> <p>(h) If the Licensee exceeds the calendar year limitation set forth in Section 2 of this license, each ton or portion thereof by which the Licensee exceeds the limitation constitutes a separate violation subject to a penalty of up to \$500. For every ton by which the licensee violates the annual tonnage limitation, Metro will assess a base penalty of \$50. This \$50 base penalty can only be contested upon issuance of this license and will be assessed in addition to any penalty calculated by Metro in the normal course of its enforcement action.</p>
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8	COMPLIANCE WITH LAW
	<p>Licensee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders, and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.05 whether or not those provisions have been specifically mentioned or cited herein. All conditions imposed on the collection and hauling of the Licensee's solid waste by federal, state, regional or local governments or agencies having jurisdiction over solid waste generated by the Licensee shall be deemed part of this license as if specifically set forth herein.</p>

9	INDEMNIFICATION
	<p>Licensee shall defend, indemnify and hold harmless Metro, its elected officials, officers, employees, agents and representatives from any and all claims, demands, damages, causes of action, or losses and expenses, or including all attorneys' fees, whether incurred before any litigation is commenced, during any litigation or on appeal, arising out of or related in any way to the issuance or administration of this non-system license or the transport and disposal of the solid waste covered by this license.</p>

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 09-4089 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO ARROW SANITARY SERVICE, INC. FOR DELIVERY OF PUTRESCIBLE WASTE TO THE WEST VAN MATERIALS RECOVERY CENTER AND THE CENTRAL TRANSFER AND RECYCLING CENTER

November 13, 2009

Prepared by: Warren Johnson

On December 11, 2008, the Metro Council adopted a series of resolutions that established an approach for evaluating applications and determining tonnage authorizations for certain non-system licenses (NSLs) pertaining to putrescible waste during 2009. This approach was established to manage Metro's contractual obligations especially while regional tonnage remained low and uncertain during the current economic environment. This same general approach is recommended in 2010.

Approval of Resolution No. 09-4089 will authorize the Chief Operating Officer (COO) to issue a one-year NSL, substantially similar to the proposed license attached to this resolution as Exhibit A, to Arrow Sanitary Service, Inc. (Arrow) authorizing the delivery of up to 28,518 tons of putrescible waste to the West Van Materials Recovery Center (WVAN) and the Central Transfer and Recycling Center (CTRC) during calendar year 2010. The applicant (Arrow), the destination facilities (WVAN and CTRC), as well as the ultimate disposal site (Finley Buttes Landfill) are all owned by Waste Connections, Inc. (WCI), a waste management company headquartered in Folsom, California.

1. INTRODUCTION

A. Background

(1) Overview

NSLs are the main vehicles by which Metro manages its contractual obligation to deliver a minimum of 90 percent of the region's putrescible waste, that is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management. NSLs allow Metro to closely monitor and potentially guide waste flows to authorized facilities in order to comply with the contract. This approach provides for a high level of control and fast response to changes in conditions. Resolution No. 09-4089 would grant an NSL to Arrow to deliver Metro-area putrescible waste to facilities owned by WCI located in Clark County, Washington. That is, this NSL controls a portion of the ten percent of uncommitted waste not guaranteed to Waste Management under the disposal contract. Metro Council is scheduled to consider four such NSL resolutions controlling the uncommitted ten percent. In addition to this action for Arrow, Metro Council will consider resolutions for American Sanitary Service, Inc. (Res. No. 09-4087), Crown Point Refuse, Inc. (Res. No. 09-4088), and Willamette Resources, Inc. (Res. No. 09-4090).

In 2009, the Metro Council granted one-year NSLs to each of the above referenced licensees. Each licensee received a maximum tonnage limit for the calendar year which, summed across all licenses, did not exceed 9.5 percent of the total tonnage subject to the flow guarantee based on Metro's tonnage forecast for 2009. Upon issuance of the NSLs, each licensee immediately received 50 percent of the total tonnage authorized under the license for use during the first six months of 2009. The COO then released additional tonnage, as available, to each licensee for use during the third and fourth quarters of 2009.

As discussed in the "Budget/Rate Impact" section of this staff report, the current policy of allocating the uncommitted tonnage has a rate impact of \$0.86 on Metro's tip fee. That is, Metro's transfer station

customers will pay approximately \$534,000 more in calendar year 2010 than if 100 percent of the waste were delivered to a landfill owned by Waste Management. The financial impact of granting the proposed NSLs will be factored into the solid waste fund and rates budget.

(2) Design of the 2010 NSLs

For the 2010 renewal period, staff is proposing the same approach for evaluating the applications and determining the yearly tonnage authorizations that was used in 2009. In particular, staff recommends that the Metro Council again grant one-year NSLs for each of the four applicants authorizing a maximum yearly tonnage limitation for 2010. The limitation for each of the NSLs will be based on a share of the tonnage that is projected to be available for allocation during calendar year 2010 as described in Section 1A(3).

For 2010, Metro would again grant up to 9.5 percent of the available projected tonnage to those applicants that have applied to renew NSLs based on the latest tonnage forecast. If the Metro Council allocates the full 9.5 percent as proposed, then, based on the current Code requirement to consider the impact of Metro's contractual obligations when granting NSLs, Metro would not allow tonnage limit increases under these licenses, except as described in this report. Furthermore, Metro would not accept any new applications for these types of NSLs during 2010 unless additional tonnage becomes available (e.g., a significant economic upturn or a current license-holder no longer using its entire tonnage allocation). In the event that a current licensee no longer intends to use its allocation, the COO could reallocate the available tonnage to the remaining license-holders.

These renewed NSLs would authorize a maximum yearly tonnage limit which, in aggregate, would not exceed 9.5 percent of the total projected tonnage subject to the flow guarantee. However, unlike the quarterly allocations in 2009, the proposed NSLs for 2010 include yearly tonnage limits that are immediately available for use throughout the term of the license. Specifically, in 2010 each licensee will initially receive 85 percent of its portion of the total tonnage allocation as an upfront yearly tonnage limit. The remaining 15 percent of the licensee's portion would then be held in reserve which may be released by the COO, as available, by no later than November 2, 2010. The COO may adjust the licensee's yearly tonnage limit as necessary using the methodology described in Section 1A(3) of this report. Metro would enforce the yearly tonnage limit stipulated in the license.

Additionally, should economic conditions improve during the upcoming calendar year and tonnage increase above the level that was projected in Metro's latest forecast, the proposed NSL includes a growth allowance provision. This provision allows the COO to increase the yearly tonnage limit of the licensee by up to an additional five percent above the 15 percent tonnage amount held in reserve. This means that through the combination of the reserve tonnage and growth allowance conditions described above, the COO is authorized to increase the yearly tonnage limit of the proposed license by up to 20 percent without seeking further Council action.

The NSLs also authorize the COO to immediately redirect a licensee's waste to Metro Central or South Transfer Stations if necessary to prevent a violation of the disposal contract flow guarantee. In the case of Arrow, an additional unique condition is included in the proposed NSL, as described in Section 1C of this report, to address the applicant's compliance record with respect to its previous tonnage limit violations.

(3) Tonnage Allocation Methodology

The tonnage allocations are based on Metro's forecast of future waste that is subject to the flow guarantee under its disposal contract with Waste Management, and each licensee's share of prior waste that was

delivered to all solid waste facilities in the most recent 12-month period (October 2008 through September 2009). The details of the allocation are as follows:

- **Total Tonnage.** Metro forecasts that 809,500 tons will be subject to the flow guarantee in calendar year 2010. This number is derived from Metro's latest econometric forecasting model of the solid waste system. This model is used for all of Metro's major decisions involving solid waste tonnage including budgeting, rate setting and revenue projections. The allocation numbers are based on the most recent forecast, which was completed in November 2009 and covers the period through December 2011. Metro plans to review and update the forecast model in the first calendar quarter of 2010.
- **Reservation Tonnage.** Metro reserves a portion of the total tonnage to meet its contractual obligations under the disposal contract. For these allocations, Metro reserved 90.5 percent, which is comprised of the 90 percent flow guarantee plus a management allowance of 0.5 percent for the tonnage that would flow during a 2.6 week cycle should the redirection of the waste have to be implemented. The 2.6 weeks is comprised of a 2-week reporting lag, plus four days for notification and redirection logistics.
- **Allocable Tonnage.** 77,000 tons comprise the 9.5 percent of the 809,500 tons that are not reserved and therefore initially available to allocate among the applicants. (The 77,000 tons is rounded up to the nearest hundred tons.)
- **Licensee's Portion.** Each licensee is allocated a share of the 77,000 tons in the same proportion as the tonnage subject to the flow guarantee that the licensee actually delivered to all solid waste facilities during the most recent 12-month period (October 2008 through September 2009). For Arrow, the share was 43.6 percent, leading to the initial recommended license authorization of up to 28,518 tons in 2010.

The following table provides a comparison of the licensees' 2009 authorizations, the tonnage requested in their renewal applications for 2010, and the proposed 2010 authorizations.

Table 1
Comparison of Solid Waste Subject to the Flow Guarantee by NSL Applicant

Licensee	2009 Original Tonnage Authorization	2009 Adjusted Tonnage Authorization	Applicants' 2010 Tonnage Requests	Solid Waste Delivered to All Facilities (Oct. 2008—Sept. 2009)		Proposed 2010 Allocations		
				Tons	Percent	Total Tons	Yearly Tonnage Limit (85%)	Licensee's Reserve Tonnage (15%)
American Res. No. 09-4087	4,842	4,583	5,194	5,729	5.9	4,527	3,848	679
Arrow Res. No. 09-4089	33,020	31,252	41,696	42,459	43.6	33,551	28,518	5,033
Crown Point Res. No. 09-4088	321	304	500	356	0.4	281	239	42
WRI Res. No. 09-4090	44,018	41,661	45,000	48,900	50.2	38,641	32,845	5,796
TOTAL	82,201	77,800	92,390	97,444	100	77,000	65,450	11,550

B. The Applicant

Arrow is a solid waste hauler that is franchised to collect solid waste within the cities of Portland, Gresham, and unincorporated Clackamas County. In December 2008, Metro granted Arrow a one-year NSL authorizing the delivery of putrescible waste from its collection routes located inside the Metro region to WVAN and CTRC during calendar year 2009 (33,020 tons). WVAN and CTRC, both operated by Columbia Resource Company (CRC), are located within Clark County, Washington. CRC and Arrow are owned by WCI.

The term of Arrow's existing NSL No. N-029-09C commenced on January 1, 2009 and is set to expire on December 31, 2009. The calendar year tonnage limitation that Metro initially established for the NSL (33,020 tons) was based on Metro's forecast, issued October 2008, of the waste that was subject to its disposal contract with Waste Management and Arrow's share of such waste. However, actual tonnage subject to the flow guarantee had been trending about five percent below the level that Metro projected in October 2008. In September 2009, the COO amended each of these NSLs such that the fourth quarter tonnage allocations were less than initially anticipated when these licenses were issued in December 2008. In the case of Arrow, the COO actually allocated a total of 31,252 tons of putrescible waste for 2009, based on the adjusted forecasted tonnage (1,768 tons less than originally authorized).

In addition, Arrow exceeded its NSL tonnage limits for the first-half and third quarter of the year which subsequently resulted in enforcement actions by Metro. A fuller discussion of these violations is provided in Section 2B(6) of this report.

On September 17, 2009, Arrow submitted an NSL application requesting that Metro renew its NSL in 2010 with a tonnage authorization of 41,696 tons for calendar year 2010 and 43,780 tons for 2011. This request represents an increase to the applicant's existing adjusted tonnage authorization by 10,444 additional tons in calendar year 2010 and 12,528 additional tons in 2011. While the tonnage available for allocation to Arrow, based on the past 12-month period, is more than in 2009, as explained in section 1C of this report, it is less than what was requested by Arrow.

C. Description of the Resolution

Approval of Resolution No. 09-4089 will authorize the COO to issue a renewed NSL for 2010 that is substantially similar to the proposed NSL attached to this resolution as Exhibit A. In 2010, the applicant's total tonnage allocation is 2,299 tons more than the adjusted limit currently authorized under its 2009 license. The 2010 tonnage authorization is based on the methodology described above in Section 1A of this report.

Metro Code Section 5.05.025 prohibits any person from utilizing non-system facilities without an appropriate license from Metro. Section 5.05.035(c) of the Metro Code stipulates that the Metro Council shall consider certain factors when determining whether to issue NSLs. A description of these factors and the corresponding analysis of the renewal application are provided in Section 2B of this report.

WCI has verbally indicated to Metro staff that it intends to honor its NSL yearly tonnage limits in 2009 and 2010. However, based on the information provided above and the analysis provided in Section 2B, the COO recommends that the Metro Council approve an NSL renewal for Arrow subject to the requirements listed in Metro Code Chapter 5.05; and further subject to special conditions which are incorporated into the proposed NSL attached to this resolution as Exhibit A. The conditions in the proposed license are intended to further minimize Metro's risk of noncompliance with its disposal contract by providing Metro with additional controls for monitoring and managing the flow guarantee

against the currently declining waste tonnage in the system and to address Arrow's past record of noncompliance.

The main special conditions that are included in the proposed NSL for Arrow are described below. In particular, items (1) and (2) are new conditions that are included in all of the proposed NSLs to provide the licensees with greater tonnage certainty and flexibility, while retaining timely controls for Metro to monitor the flow guarantee and address potential economic improvement and tonnage growth during the upcoming year. Items (3) through (5) describe conditions that were carried forward from the existing license and are included in all of the proposed NSLs. Item (6) is a new, unique condition for Arrow that is included in the proposed NSL specifically due to Arrow's record of NSL tonnage limit violations. A fuller discussion of these violations is provided in Section 2B(6) of this report.

(1) Calendar Year Tonnage Limitation

Section 2 of the proposed NSL authorizes Arrow to initially deliver up to 28,518 tons of putrescible waste to WVAN and CTRC during calendar year 2010. This yearly tonnage limit is immediately available for use throughout the term of the license. The license also stipulates that, by no later than November 2, 2010, the COO may release additional tonnage and increase the licensee's limit by up to an additional 15 percent (5,033 tons) as available. If the COO were to release the full reserve amount provided under this proposed license, then Arrow's yearly tonnage limit would be increased up to a total of 33,551 tons. This condition allows the COO to adjust the yearly tonnage authorization as necessary to meet Metro's contractual obligations and allows the maximum use of the licensee's available tonnage. By adopting this resolution, the Metro Council authorizes the COO to release the reserve tonnage as described above.

(2) Tonnage Authorization Growth Allowance

Section 7 of the proposed NSL stipulates that in addition to the 15 percent reserve tonnage allocation described above, the COO may increase the yearly tonnage authorization of the licensee by up to an additional five percent of its total tonnage allocation (1,677 tons) if such tonnage is available during the term of the license. If the COO were to grant the maximum growth allowance and release the licensee's full reserve amount (as described above), then Arrow's yearly tonnage limit could be increased up to a total of 20 percent (35,228 tons). The COO's decision whether to grant such a growth allowance will be based on Metro's forecast of waste that is subject to the flow guarantee under its disposal contract with Waste Management. Any tonnage increases greater than twenty percent (i.e., the combined growth allowance and reserve tonnage amounts) would require Council approval. By adopting this resolution, the Metro Council authorizes the COO to determine and allocate growth allowance as described above.

(3) Term of License

Section 4 of the proposed NSL includes a one-year term, commencing on January 1, 2010, and terminating on December 31, 2010. Although renewed NSLs can be issued for up to two-year periods, a one-year term is proposed in this instance because of the continuing economic uncertainty and other factors that could reduce the amount of tonnage available for the upcoming year.

(4) Redirection of Waste Flow

Section 7 of the proposed NSL grants the COO authority to direct the licensee to deliver its waste, as covered under the license, to either the Metro Central or South Transfer Stations. The COO may determine when such redirection of waste flow is necessary. In addition, the COO may redirect waste flow upon providing the licensee with a minimum of 24 hours' written notice. By adopting this

resolution, the Metro Council authorizes the COO to redirect the licensee's waste, as described above, if necessary to comply with the disposal contract flow guarantee.

(5) Weekly and Daily Reporting Requirement

As previously required, Section 6 of the proposed NSL stipulates that the licensee must maintain and report accurate records regarding the amount of waste that it delivers to the non-system facility under authority of the license. At a minimum the licensee shall transmit the required records to Metro on a monthly basis. However, the proposed NSL also stipulates that Metro may require the licensee to report such required information to Metro on a weekly or daily basis. The COO will determine when more frequent reporting is necessary. By adopting this resolution, the Metro Council authorizes the COO to immediately implement more frequent reporting requirements as needed.

(6) Enforcement Penalties (Unique to Arrow)

As in the 2009 NSL, the 2010 NSL stipulates that an exceedence of the license tonnage limitation constitutes a violation that is subject to an enforcement action and subject to a penalty of up to \$500 per ton (or portion thereof) over the tonnage allocation. The proposed 2010 license also includes an additional condition stipulating that, based on the licensee's compliance history, for every ton by which the licensee violates the tonnage limitation, Metro will assess a base penalty of \$50 for each ton in excess of the yearly tonnage limit. This \$50 base penalty would be assessed, in addition to any penalty calculated by Metro, as part of an enforcement action. Staff recommends this new condition due to Arrow's record of NSL tonnage limit violations. A fuller discussion of these violations is provided in Section 2B(6) of this report.

While WCI has verbally agreed to abide by the tonnage limit established for 2010, this proposed condition provides additional incentive to comply with such a limit. In fact, the proposed \$50 base penalty significantly exceeds the penalties that Metro assessed on tonnage limit violations in the recent past and should provide sufficient incentive for Arrow to maintain compliance in the future. By adopting this resolution, if Arrow were to violate the yearly tonnage limitation set forth in the proposed NSL, Arrow will be required to pay Metro a minimum penalty of \$50 per ton for each ton that it exceeds its stipulated yearly limitation. Furthermore, Arrow's opportunity to contest such a minimum penalty is only available at the time that Resolution No. 09-4089 is adopted and the license is issued. In other words, if Arrow exceeds its yearly tonnage limit, it is immediately subject to a \$50 per ton penalty and does not have further opportunity to contest such an action by Metro. Metro also retains its right to pursue additional penalties, subject to due process, of up to \$450 per ton for such tonnage cap violations, and as informed by circumstances related to the violation.

2. ANALYSIS/INFORMATION

A. Known Opposition

The applicant (WCI) may disagree with certain conditions and limitations included in the proposed license. Arrow had previously requested a contested case hearing regarding the tonnage limitation initially included in its existing NSL and the subsequent third quarter modification. However, WCI has verbally agreed to comply with the NSL tonnage limits established by Metro in 2010.

There is no known opposition from other parties regarding the granting of the proposed license or its proposed conditions.

B. Legal Antecedents

Section 5.05.035(c) of the Metro Code provides that, when determining whether or not to approve an NSL application, the Metro Council shall consider the following factors to the extent relevant to such determination.

- (1) *The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which such wastes pose a future risk of environmental contamination;*

The proposed disposal sites are transfer stations that do not pose any known potential for environmental risk from wastes delivered from prior users. After processing at the transfer stations, the waste is transported via barge to Finley Buttes Landfill, located in Morrow County, Oregon. Finley Buttes Landfill is also a Metro designated facility authorized to receive non-putrescible processing residual without the need for haulers to obtain an NSL. Other than that delivered via WVAN and CTRC, the Finley Buttes Landfill does not receive any other putrescible waste from the Metro region.

- (2) *The record of regulatory compliance of the non-system facility's owner and operator with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;*

WCI reportedly has a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

- (3) *The adequacy of operational practices and management controls at the non-system facility;*

WVAN and CTRC use operational practices and management controls that are typical of transfer stations and that Metro considers adequate for the protection of health, safety, and the environment.

- (4) *The expected impact on the region's recycling and waste reduction efforts;*

The proposed NSL covers only putrescible waste, which has little recovery or recycling potential. Thus, the waste authorized by the proposed license is not expected to impact the region's recycling and waste reduction efforts.

- (5) *The consistency of the designation with Metro's existing contractual arrangements;*

Metro has committed to deliver 90 percent of the total tons of putrescible waste that Metro delivers to general purpose landfills during the calendar year to landfills operated by Metro's waste disposal contract operator, Waste Management. This proposed NSL renewal is one of four similar licenses that will expire at the end of 2010. Provisions in the NSL allow Metro to monitor compliance with its disposal contract, as was covered in Section 1A of this report. However, see subsection (6) below.

- (6) *The record of the applicant regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;*

Arrow has violated the tonnage limitations stipulated in its licenses on four consecutive occasions as described below:

- Calendar Year 2007: Arrow exceeded its NSL tonnage limitation in calendar year 2007 by 3,756 tons (10.6 percent of the total tonnage). Metro issued a Notice of Violation (NOV) to Arrow for these tonnage limit violations, imposing a penalty of \$3,756. Arrow contested the penalty and the matter was brought to a hearing. The Hearings Officer subsequently found in favor of Metro. Arrow and Metro then agreed to settle the matter for the sum of \$3,200 which was approved by Council. Arrow has since paid the settlement amount.
- Calendar Year 2008: Arrow exceeded its NSL tonnage limitation in calendar year 2008 by 218 tons (0.6 percent of the total tonnage). Metro issued an NOV to Arrow for these tonnage limit violations, imposing a penalty of \$436. Arrow did not contest the NOV and it subsequently paid the full penalty amount.
- First and Second Quarter 2009: Arrow exceeded its NSL tonnage limitation for the first and second quarters of calendar year 2009 by 3,269.16 tons (19.8 percent of the total tonnage). Metro issued an NOV to Arrow for these violations, imposing a penalty of \$36,891.74. In addition to the imposition of a penalty, Metro reduced Arrow's third quarter tonnage limit by 3,269 tons. Arrow contested the penalty and the matter was brought to a hearing on September 28, 2009. On October 27, 2009, the Hearings Officer issued a proposed order that upheld Metro's penalty action on this matter. Either the proposed order or a settlement proposal will be presented to Council for consideration.
- Third Quarter: Arrow exceeded its NSL tonnage limitation for the third quarter of calendar year 2009 by 4,819.34 tons (96.7 percent of the total tonnage). Metro issued an NOV to Arrow for these violations, imposing a penalty of \$36,851.86. In advance of issuing the NOV, Metro reduced Arrow's fourth quarter tonnage limitation by an amount that it was estimated to exceed through the end of the calendar year. Arrow's response to the NOV is pending.

WCI and Metro have had an on-going legal disagreement about the flow guarantee and Metro's obligation to meet it. This disagreement has contributed, in part, to Arrow's record of noncompliance. WCI management has since indicated to Metro staff that, for the remainder of 2009 and in 2010, it will comply with its NSL tonnage limitation as established by Metro.

Based upon information provided by Arrow and the transaction data obtained by Metro from transfer stations located within the region, Arrow is currently in compliance with its fourth quarter tonnage limitation. However, as discussed in Section 1C of this report, in consideration of the applicant's past compliance record, staff recommends that a unique special condition be added to the proposed license in order for Metro to take sufficient and appropriate enforcement actions rather than the outright denial of Arrow's license renewal application.

- (7) *Such other factors as the Chief Operating Officer deems appropriate for purposes of making such determination.*

This criterion was examined above in Sections 1A and 1C of this report.

C. Anticipated/Potential Effects

This proposed NSL is one of many action items currently under consideration by Metro which is affected by potential declines in the amount of solid waste subject to the flow guarantee. Some decisions could have the effect of shrinking the pool of waste available for allocation. For instance, increased diversion from the landfill due to higher recovery or an improved organics program with the selection of a new transfer station operator could have such an impact. Decisions on these other action items have not yet been made so their potential impact on tonnage is not fully known at this point. The forecast of waste subject to the flow guarantee, which is the basis for the NSL tonnage authorizations, incorporates the best available information as of this writing.

Additionally, in 2009 staff noted that the granting of these types of NSLs had a potential financial impact on the regional solid waste system ratepayers through a “rate matching” effect. That is, Metro’s tip fee is generally matched by private solid waste facilities in the region which results in increased costs to customers of private facilities. However, it appears that this rate matching effect will not be a factor in 2010. In 2009, Metro Council decided to limit Metro’s 2010 rate increase at its transfer stations through a variety of methods (e.g., using reserve funds). Because of this decision, most privately-owned transfer stations now have tip fees above that of the current Metro rate; thus, mitigating the impact of rate matching in 2010.

D. Budget/Rate Impacts

As is generally known, the price that Metro pays for disposal at Columbia Ridge Landfill is a “declining block rate” — meaning that the more waste that is delivered to any landfill owned by Waste Management, the lower the per-ton cost paid by Metro. Based on projected tonnage and contract prices, allocating the uncommitted 77,000 tons to non-Waste Management landfills increases the Metro tip fee by \$0.86. Metro customers will pay \$534,000 more for disposal than if all of the uncommitted waste were to flow to Waste Management landfills. The practice of issuing these types of NSLs has been occurring under the Council’s direction for the past nine years.

The Metro Regional System Fee and Excise Tax will continue to be collected on all waste delivered under authority of the proposed NSL. The application under consideration is the renewal of an existing NSL (No. N-029-09C). Therefore, the financial impact has already been factored into the budget.

3. RECOMMENDED ACTION

Based on the information provided in this report, the COO recommends approval of Resolution No. 09-4089, finding that the proposed license satisfies the requirements of Metro Code Section 5.05.035, and renewal of an NSL substantially similar to the proposed NSL attached to the resolution as Exhibit A including the special conditions that are unique to Arrow as described in Section 1C of this report.

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Agenda Item Number 3.5

Resolution No. 09-4090, For the Purpose of Authorizing the Chief Operating Officer to Issue a Renewed Non-System License to Willamette Resources, Inc. for Delivery of Putrecible Waste to the Coffin Butte Landfill

Consent Agenda

Metro Council Meeting
Thursday, December 10, 2009
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER) RESOLUTION NO. 09-4090
TO ISSUE A RENEWED NON-SYSTEM LICENSE TO)
WILLAMETTE RESOURCES, INC. FOR DELIVERY) Introduced by Michael Jordan,
OF PUTRESCIBLE WASTE TO THE COFFIN BUTTE) Chief Operating Officer, with the
LANDFILL) concurrence of David Bragdon,
) Council President

WHEREAS, the Metro Code requires a non-system license of any person that delivers solid waste generated from within the Metro Region to a non-system disposal facility; and

WHEREAS, Willamette Resources, Inc. ("WRI") holds Metro Solid Waste Facility Non-System License No. N-005-09(3)B, which expires on December 31, 2009; and

WHEREAS, WRI has filed a completed application seeking renewal of the non-system license to deliver putrescible waste to the Coffin Butte Landfill for disposal under the provisions of Metro Code Chapter 5.05, "Solid Waste Flow Control;" and

WHEREAS, the Metro Code Chapter provides that applications for non-system licenses for putrescible waste shall be reviewed by the Chief Operating Officer and are subject to approval or denial by the Metro Council; and

WHEREAS, the Chief Operating Officer has analyzed the application and considered the relevant factors under the Metro Code; and

WHEREAS, the Chief Operating Officer recommends that the non-system license be renewed together with specific conditions as provided in Exhibit A to this Resolution; now therefore,

THE METRO COUNCIL ORDAINS AS FOLLOWS:

1. The non-system license renewal application of WRI is approved subject to the terms, conditions, and limitations contained in Exhibit A to this Resolution.
2. The Chief Operating Officer is authorized to issue to WRI a renewed Solid Waste Facility Non-System License substantially similar to the one attached as Exhibit A.

ADOPTED by the Metro Council this ____ day of _____, 2009.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

Resolution No. 09-4090

WJ:bjl
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600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1835 FAX 503 813 7544



METRO

**METRO SOLID WASTE FACILITY
NON-SYSTEM LICENSE**

No. N-005-10(3)

LICENSEE:

Willamette Resources, Inc.
10295 SW Ridder Road
Wilsonville, OR 97070

CONTACT PERSON:

	Carol Dion	Ray Phelps
Phone:	(503) 570-0626	(503) 784-3516
Fax:	(503) 570-0523	(503) 570-0523
E-Mail:	CDion@republicservices.com	RPhelps@republicservices.com

MAILING ADDRESS:

Willamette Resources, Inc.
10295 SW Ridder Road
Wilsonville, OR 97070

ISSUED BY METRO:

Michael Jordan, Chief Operating Officer

Date



1	NATURE OF WASTE COVERED BY LICENSE
	Putrescible solid waste generated within the Metro boundary and received at Willamette Resources, Inc. in accordance with Metro Solid Waste Facility Franchise No. F-005-08.

2	CALENDAR YEAR TONNAGE LIMITATION
	<p>(a) Licensee is authorized to deliver to the non-system facility described in Section 3 of this license up to 32,845 tons per calendar year of the waste described in Section 1.</p> <p>(b) By no later than November 2, 2010, Metro's Chief Operating Officer ("COO") may release additional reserve tonnage and amend this license to adjust the calendar tonnage limitation as established by Metro Council and described in the staff report to Resolution No. 09-4090.</p> <p>(c) This license does not increase the total tonnage that the Licensee is authorized to accept under Metro Solid Waste Facility Franchise No. F-005-08.</p>

3	NON-SYSTEM FACILITY
	<p>The Licensee hereunder is authorized to deliver the waste described above in Section 1 to the following non-system facility:</p> <p style="padding-left: 40px;">Coffin Butte Landfill 28972 Coffin Butte Road Corvallis, OR 97330</p> <p>This license is issued on condition that the non-system facility named in this section is authorized to accept the type of waste described in Section 1. If Metro receives notice from the Oregon Department of Environmental Quality or local regulatory authority that this non-system facility is not authorized to accept such waste, Metro may immediately terminate this license pursuant to Section 7 of this license.</p>



4	TERM OF LICENSE
	The term of this license will commence on January 1, 2010 and expire at midnight on December 31, 2010, unless terminated sooner under Section 7 of this license.
5	REPORTING OF ACCIDENTS AND CITATIONS
	Licensee shall report to Metro any significant incidents (such as fires), accidents, and citations involving vehicles transporting the solid waste authorized by this license.
6	Record Keeping and Reporting
	<p>(a) The Licensee shall keep and maintain accurate records of the amount of all solid waste that the Licensee delivers to the non-system facility described in Section 3 of this license. The Licensee shall keep and maintain complete and accurate records of the following for all transactions with the authorized non-system facility:</p> <ul style="list-style-type: none">i. Ticket or weight slip number from the non-system facility;ii. Material category designating the type of material transferred to the non-system facility;iii. Date the load was transferred to the non-system facility;iv. Time the load was transferred to the non-system facility;v. Net weight of the load; andvi. Fee charged by the non-system facility <p>(b) No later than the fifteenth (15th) day of each month, beginning with the first month following the commencement date of this license, Licensee shall:</p> <ul style="list-style-type: none">i. Transmit the records required under Section 6(a) above to Metro in an electronic format prescribed by Metro;ii. Submit to Metro a Regional System Fee and Excise Tax Report, that covers the preceding month; andiii. Remit to Metro the requisite Regional System Fees and Excise Tax in accordance with the Metro Code provisions applicable to the collection, payment, and accounting of such fees and taxes. <p>(c) Licensee shall make all records from which Sections 6(a) and 6(b) above are derived available to Metro (or Metro's designated agent) for its</p>



inspection or copying, as long as Metro provides no less than three (3) business days written notice of an intent to inspect or copy documents. Licensee shall, in addition, sign or otherwise provide to Metro any consent or waiver necessary for Metro to obtain information or data from a third party, including the non-system facility named in Section 3, above.

(d) Metro may require the Licensee to report the information required by this Section on a weekly or daily basis.

7

ADDITIONAL LICENSE CONDITIONS

This license shall be subject to the following conditions:

- (a) The permissive transfer of solid waste to the non-system facility, listed in Section 3, authorized by this license shall be subordinate to any subsequent decision by Metro to direct the solid waste described in this license to any other facility.
- (b) In addition to the amendments by the COO authorized by Section 2 of this license, this license shall be subject to amendment, modification, or termination by the COO in the event that the COO determines that:
 - i. There has been sufficient change in any circumstances under which Metro issued this license;
 - ii. The provisions of this license are actually or potentially in conflict with any provision in Metro's disposal contract with Waste Management Disposal Services of Oregon, Inc., dba Oregon Waste Systems, Inc.;
 - iii. Metro's solid waste system or the public will benefit from, and will be better served by, an order directing that the waste described in Section 1 of this license be transferred to, and disposed of at, a facility other than the facility listed in Section 3; or
 - iv. There has been sufficient change in the amount of tonnage available for allocation during the term of the license. In the event that additional tonnage becomes available for allocation, the COO may amend Section 2(a) of this license to increase the calendar year tonnage limitation by up to five percent in addition to the reserve tonnage amount described in Section 2(b).
- (c) This license shall, in addition to subsections (b)(i) through (b)(iv), above, be subject to amendment, modification, suspension, or termination pursuant to the Metro Code.
- (d) The Licensee shall not transfer or assign any right or interest in this license without prior written notification to, and approval of, Metro.
- (e) This license shall terminate upon the execution of a designated facility agreement with the facility listed in Section 3 that authorizes the facility to accept the waste described in Section 1 of this license.



	<p>(f) This license authorizes the delivery of solid waste to the facility listed in Section 3. Transfer of waste generated from within the Metro boundary to any non-system facility other than that specified in this license is prohibited unless authorized in writing by Metro.</p> <p>(g) The COO may direct the Licensee's waste flow under this non-system license to any system facility with a minimum of 24 hours' written notice. Any redirection of the waste flow by the COO is effective immediately.</p> <p>(h) If the Licensee exceeds the calendar year limitation set forth in Section 2 of this license, each ton or portion thereof by which the Licensee exceeds the limitation constitutes a separate violation subject to a penalty of up to \$500.</p>
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8	COMPLIANCE WITH LAW
	<p>Licensee shall fully comply with all applicable local, regional, state and federal laws, rules, regulations, ordinances, orders, and permits pertaining in any manner to this license, including all applicable Metro Code provisions and administrative procedures adopted pursuant to Chapter 5.05 whether or not those provisions have been specifically mentioned or cited herein. All conditions imposed on the collection and hauling of the Licensee's solid waste by federal, state, regional or local governments or agencies having jurisdiction over solid waste generated by the Licensee shall be deemed part of this license as if specifically set forth herein.</p>

9	INDEMNIFICATION
	<p>Licensee shall defend, indemnify and hold harmless Metro, its elected officials, officers, employees, agents and representatives from any and all claims, demands, damages, causes of action, or losses and expenses, or including all attorneys' fees, whether incurred before any litigation is commenced, during any litigation or on appeal, arising out of or related in any way to the issuance or administration of this non-system license or the transport and disposal of the solid waste covered by this license.</p>

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 09-4090 AUTHORIZING THE CHIEF OPERATING OFFICER TO ISSUE A RENEWED NON-SYSTEM LICENSE TO WILLAMETTE RESOURCES, INC. FOR DELIVERY OF PUTRESCIBLE WASTE TO THE COFFIN BUTTE LANDFILL

November 13, 2009

Prepared by: Warren Johnson

On December 11, 2008, the Metro Council adopted a series of resolutions that established an approach for evaluating applications and determining tonnage authorizations for certain non-system licenses (NSLs) pertaining to putrescible waste during 2009. This approach was established to manage Metro's contractual obligations especially while regional tonnage remained low and uncertain during the current economic environment. This same general approach is recommended in 2010.

Approval of Resolution No. 09-4090 will authorize the Chief Operating Officer (COO) to issue a one-year NSL, substantially similar to the proposed license attached to this resolution as Exhibit A, to Willamette Resources, Inc. (WRI) authorizing the delivery of up to 32,845 tons of putrescible waste to the Coffin Butte Landfill (CBLF) during calendar year 2010. The applicant (WRI) and the disposal site (CBLF) are both owned by Allied Waste Industries, Inc. (Allied), a wholly owned subsidiary of Republic Waste Systems, Inc. headquartered in Phoenix, Arizona.

1. INTRODUCTION

A. Background

(1) Overview

NSLs are the main vehicles by which Metro manages its contractual obligation to deliver a minimum of 90 percent of the region's putrescible waste, that is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management. NSLs allow Metro to closely monitor and potentially guide waste flows to authorized facilities in order to comply with the contract. This approach provides for a high level of control and fast response to changes in conditions. Resolution No. 09-4090 would grant an NSL to WRI to deliver Metro-area putrescible waste to a disposal site owned by Allied located in Benton County, Oregon. That is, this NSL controls a portion of the ten percent of uncommitted waste not guaranteed to Waste Management under the disposal contract. Metro Council is scheduled to consider four such NSL resolutions controlling the uncommitted ten percent. In addition to this action for WRI, Metro Council will consider resolutions for American Sanitary Service, Inc. (Res. No. 09-4087), Arrow Sanitary Service, Inc. (Res. No. 09-4089), and Crown Point Refuse, Inc. (Res. No. 09-4088).

In 2009, the Metro Council granted one-year NSLs to each of the above referenced licensees. Each licensee received a maximum tonnage limit for the calendar year which, summed across all licenses, did not exceed 9.5 percent of the total tonnage subject to the flow guarantee based on Metro's tonnage forecast for 2009. Upon issuance of the NSLs, each licensee immediately received 50 percent of the total tonnage authorized under the license for use during the first six months of 2009. The COO then released additional tonnage, as available, to each licensee for use during the third and fourth quarters of 2009.

As discussed in the "Budget/Rate Impact" section of this staff report, the current policy of allocating the uncommitted tonnage has a rate impact of \$0.86 on Metro's tip fee. That is, Metro's transfer station customers will pay approximately \$534,000 more in calendar year 2010 than if 100 percent of the waste

were delivered to a landfill owned by Waste Management. The financial impact of granting the proposed NSLs will be factored into the solid waste fund and rates budget.

(2) Design of the 2010 NSLs

For the 2010 renewal period, staff is proposing the same approach for evaluating the applications and determining the yearly tonnage authorizations that was used in 2009. In particular, staff recommends that the Metro Council again grant one-year NSLs for each of the four applicants authorizing a maximum yearly tonnage limitation for 2010. The limitation for each of the NSLs will be based on a share of the tonnage that is projected to be available for allocation during calendar year 2010 as described in Section 1A(3).

For 2010, Metro would again grant up to 9.5 percent of the available projected tonnage to those applicants that have applied to renew NSLs based on the latest tonnage forecast. If the Metro Council allocates the full 9.5 percent as proposed, then, based on the current Code requirement to consider the impact of Metro's contractual obligations when granting NSLs, Metro would not allow tonnage limit increases under these licenses, except as described in this report. Furthermore, Metro would not accept any new applications for these types of NSLs during 2010 unless additional tonnage becomes available (e.g., a significant economic upturn or a current license-holder no longer using its entire tonnage allocation). In the event that a current licensee no longer intends to use its allocation, the COO could reallocate the available tonnage to the remaining license-holders.

These renewed NSLs would authorize a maximum yearly tonnage limit which, in aggregate, would not exceed 9.5 percent of the total projected tonnage subject to the flow guarantee. However, unlike the quarterly allocations in 2009, the proposed NSLs for 2010 include yearly tonnage limits that are immediately available for use throughout the term of the license. Specifically, in 2010 each licensee will initially receive 85 percent of its portion of the total tonnage allocation as an upfront yearly tonnage limit. The remaining 15 percent of the licensee's portion would then be held in reserve which may be released by the COO, as available, by no later than November 2, 2010. The COO may adjust the licensee's yearly tonnage limit as necessary using the methodology described in Section 1A(3) of this report. Metro would enforce the yearly tonnage limit stipulated in the license.

Additionally, should economic conditions improve during the upcoming calendar year and tonnage increase above the level that was projected in Metro's latest forecast, the proposed NSL includes a growth allowance provision. This provision allows the COO to increase the yearly tonnage limit of the licensee by up to an additional five percent above the 15 percent tonnage amount held in reserve. This means that through the combination of the reserve tonnage and growth allowance conditions described above, the COO is authorized to increase the yearly tonnage limit of the proposed license by up to 20 percent without seeking further Council action.

This NSL also authorizes the COO to immediately redirect the licensee's waste to any system facility if necessary to prevent a violation of the disposal contract flow guarantee.

(3) Tonnage Allocation Methodology

The tonnage allocations are based on Metro's forecast of future waste that is subject to the flow guarantee under its disposal contract with Waste Management, and each licensee's share of prior waste that was delivered to all solid waste facilities in the most recent 12-month period (October 2008 through September 2009). The details of the allocation are as follows:

- **Total Tonnage.** Metro forecasts that 809,500 tons will be subject to the flow guarantee in calendar year 2010. This number is derived from Metro's latest econometric forecasting model of the solid waste system. This model is used for all of Metro's major decisions involving solid waste tonnage including budgeting, rate setting and revenue projections. The allocation numbers are based on the most recent forecast, which was completed in November 2009 and covers the period through December 2011. Metro plans to review and update the forecast model in the first calendar quarter of 2010.
- **Reservation Tonnage.** Metro reserves a portion of the total tonnage to meet its contractual obligations under the disposal contract. For these allocations, Metro reserved 90.5 percent, which is comprised of the 90 percent flow guarantee plus a management allowance of 0.5 percent for the tonnage that would flow during a 2.6 week cycle should the redirection of the waste have to be implemented. The 2.6 weeks is comprised of a 2-week reporting lag, plus four days for notification and redirection logistics.
- **Allocable Tonnage.** 77,000 tons comprise the 9.5 percent of the 809,500 tons that are not reserved and therefore initially available to allocate among the applicants. (The 77,000 tons is rounded up to the nearest hundred tons.)
- **Licensee's Portion.** Each licensee is allocated a share of the 77,000 tons in the same proportion as the tonnage subject to the flow guarantee that the licensee actually delivered to all solid waste facilities during the most recent 12-month period (October 2008 through September 2009). For WRI, the share was 50.2 percent, leading to the initial recommended license authorization of up to 32,845 tons in 2010.

The following table provides a comparison of the licensees' 2009 authorizations, the tonnage requested in their renewal applications for 2010, and the proposed 2010 authorizations.

Table 1
Comparison of Solid Waste Subject to the Flow Guarantee by NSL Applicant

Licensee	2009 Original Tonnage Authorization	2009 Adjusted Tonnage Authorization	Applicants' 2010 Tonnage Requests	Solid Waste Delivered to All Facilities (Oct. 2008—Sept. 2009)		Proposed 2010 Allocations		
				Tons	Percent	Total Tons	Yearly Tonnage Limit (85%)	Licensee's Reserve Tonnage (15%)
American Res. No. 09-4087	4,842	4,583	5,194	5,729	5.9	4,527	3,848	679
Arrow Res. No. 09-4089	33,020	31,252	41,696	42,459	43.6	33,551	28,518	5,033
Crown Point Res. No. 09-4088	321	304	500	356	0.4	281	239	42
WRI Res. No. 09-4090	44,018	41,661	45,000	48,900	50.2	38,641	32,845	5,796
TOTAL	82,201	77,800	92,390	97,444	100	77,000	65,450	11,550

B. The Applicant

The applicant, WRI, is the owner and operator of a Metro-franchised solid waste facility located at 10295 SW Ridder Road, in Wilsonville. In December 2008, Metro granted WRI a one-year NSL authorizing the delivery of putrescible waste from its transfer station to CBLF during calendar year 2009 (44,018 tons). WRI and CBLF are owned by Allied.

The term of WRI's existing NSL No. N-005-09(3)B commenced on January 1, 2009 and is set to expire on December 31, 2009. The calendar year tonnage limitation that Metro initially established for the NSL (44,018 tons) was based on Metro's forecast, issued October 2008, of the waste that was subject to its disposal contract with Waste Management and WRI's share of such waste. However, actual tonnage subject to the flow guarantee had been trending about five percent below the level that Metro projected in October 2008. In September 2009, the COO amended each of these NSLs such that the fourth quarter tonnage allocations were less than initially anticipated when these licenses were issued in December 2008. In the case of WRI, the COO actually allocated a total of 41,661 tons of putrescible waste for 2009, based on the adjusted forecasted tonnage (2,357 tons less than originally authorized).

On September 18, 2009, WRI submitted an NSL application requesting that Metro renew its NSL in 2010 with a tonnage authorization of 45,000 tons. This request represents an increase to the applicant's existing adjusted tonnage authorization by 3,339 additional tons in calendar year 2010. However, the tonnage available for allocation to WRI is less than in 2009 as explained in Section 1C of this report.

C. Description of the Resolution

Approval of Resolution No. 09-4090 will authorize the COO to issue a renewed NSL for 2010 that is substantially similar to the proposed NSL attached to this resolution as Exhibit A. In 2010, the applicant's total tonnage allocation is 3,020 tons less than the adjusted limit currently authorized under its 2009 license. The 2010 tonnage authorization is based on the methodology described above in Section 1A of this report.

Metro Code Section 5.05.025 prohibits any person from utilizing non-system facilities without an appropriate license from Metro. Section 5.05.035(c) of the Metro Code stipulates that the Metro Council shall consider certain factors when determining whether to issue NSLs. A description of these factors and the corresponding analysis of the renewal application are provided in Section 2B of this report.

Based on the information provided above and the analysis provided in Section 2B, the COO recommends that the Metro Council approve an NSL renewal for WRI subject to the requirements listed in Metro Code Chapter 5.05; and further subject to special conditions which are incorporated into the proposed NSL attached to this resolution as Exhibit A. The conditions in the proposed license are intended to further minimize Metro's risk of noncompliance with its disposal contract by providing Metro with additional controls for monitoring and managing the flow guarantee against the currently declining waste tonnage in the system.

The main special conditions that are included in the proposed NSL for WRI are described below. In particular, items (1) and (2) are new conditions that are included in all of the proposed NSLs to provide the licensees with greater tonnage certainty and flexibility, while retaining timely controls for Metro to monitor the flow guarantee and address potential economic improvement and tonnage growth during the upcoming year. Items (3) through (5) describe conditions that were carried forward from the existing license and are included in all of the proposed NSLs for all licensees identified in Section 1A(1) of this report.

(1) Calendar Year Tonnage Limitation

Section 2 of the proposed NSL authorizes WRI to initially deliver up to 32,845 tons of putrescible waste to CBLF during calendar year 2010. This yearly tonnage limit is immediately available for use throughout the term of the license. The license also stipulates that, by no later than November 2, 2010, the COO may release additional tonnage and increase the licensee's limit by up to an additional 15 percent (5,796 tons) as available. If the COO were to release the full reserve amount provided under this proposed license, then WRI's yearly tonnage limit would be increased up to a total of 38,641 tons. This condition allows the COO to adjust the yearly tonnage authorization as necessary to meet Metro's contractual obligations and allows the maximum use of the licensee's available tonnage. By adopting this resolution, the Metro Council authorizes the COO to release the reserve tonnage as described above.

(2) Tonnage Authorization Growth Allowance

Section 7 of the proposed NSL stipulates that in addition to the 15 percent reserve tonnage allocation described above, the COO may increase the yearly tonnage authorization of the licensee by up to an additional five percent of its total tonnage allocation (1,932 tons) if such tonnage is available during the term of the license. If the COO were to grant the maximum growth allowance and release the licensee's full reserve amount (as described above), then WRI's yearly tonnage limit could be increased up to a total of 20 percent (40,573 tons). The COO's decision whether to grant such a growth allowance will be based on Metro's forecast of waste that is subject to the flow guarantee under its disposal contract with Waste Management. Any tonnage increases greater than twenty percent (i.e., the combined growth allowance and reserve tonnage amounts) would require Council approval. By adopting this resolution, the Metro Council authorizes the COO to determine and allocate growth allowance as described above.

(3) Term of License

Section 4 of the proposed NSL includes a one-year term, commencing on January 1, 2010, and terminating on December 31, 2010. Although renewed NSLs can be issued for up to two-year periods, a one-year term is proposed in this instance because of the continuing economic uncertainty and other factors that could reduce the amount of tonnage available for the upcoming year.

(4) Redirection of Waste Flow

Section 7 of the proposed NSL grants the COO authority to direct the licensee to deliver its waste, as covered under the license, to any system facility. The COO may determine when such redirection of waste flow is necessary. In addition, the COO may redirect waste flow upon providing the licensee with a minimum of 24 hours' written notice. By adopting this resolution, the Metro Council authorizes the COO to redirect the licensee's waste, as described above, if necessary to comply with the disposal contract flow guarantee.

(5) Weekly and Daily Reporting Requirement

As previously required, Section 6 of the proposed NSL stipulates that the licensee must maintain and report accurate records regarding the amount of waste that it delivers to the non-system facility under authority of the license. At a minimum the licensee shall transmit the required records to Metro on a monthly basis. However, the proposed NSL also stipulates that Metro may require the licensee to report such required information to Metro on a weekly or daily basis. The COO will determine when more frequent reporting is necessary. By adopting this resolution, the Metro Council authorizes the COO to immediately implement more frequent reporting requirements as needed.

2. ANALYSIS/INFORMATION

A. Known Opposition

There is no known opposition to the proposed license renewal.

B. Legal Antecedents

Section 5.05.035(c) of the Metro Code provides that, when determining whether or not to approve an NSL application, the Metro Council shall consider the following factors to the extent relevant to such determination.

- (1) *The degree to which prior users of the non-system facility and waste types accepted at the non-system facility are known and the degree to which such wastes pose a future risk of environmental contamination;*

CBLF, located in Benton County, first came into use during the 1940s or 1950s when it served as the landfill for the nearby Adair Village Military base. Later, the landfill accepted industrial wastes from the Wah Chang facility located in Albany, Oregon. When CBLF became a Subtitle D landfill in 1992, the original unlined cells were capped. However, there has been a problem of leachate contamination of groundwater that is being monitored by the Oregon Department of Environmental Quality (DEQ). Since 1992, the landfill has been filling only lined cells and operating with the required environmental controls required by the DEQ. CBLF is already a Metro designated facility authorized to receive non-putrescible solid waste without the need for haulers to obtain NSLs.

- (2) *The record of regulatory compliance of the non-system facility's owner and operator with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;*

Allied owns and operates both WRI and CBLF. Allied reportedly has a good record of compliance with local and state agencies responsible for health, safety, and environmental regulations.

CBLF is permitted by the DEQ. In November 2008, Metro staff received verbal confirmation from Hugh Gao, Project Manager with the DEQ's Western Region Office, and Gordon Brown, Benton County, that CBLF is in compliance with federal, state and local requirements and the facility has a good compliance record.

Notwithstanding CBLF's good compliance record, on November 15, 2007, Metro issued a Notice of Violation to CBLF for failing to properly classify Metro-area waste and failing to collect and remit to Metro the appropriate Regional System Fee and Excise Taxes for waste received from a specific customer between the dates of May 1, 2005 through March 31, 2007. Metro subsequently imposed a penalty on CBLF in the amount of \$13,800. CBLF did not contest this Notice of Violation and it subsequently paid the entire penalty amount to Metro in December 2007. This matter has since been resolved.

- (3) *The adequacy of operational practices and management controls at the non-system facility;*

CBLF uses operational practices and management controls that are typical of Subtitle D landfills and considered by the DEQ to be adequate for the protection of the health, safety, and the environment. The

landfill's DEQ permit, along with the details of its waste screening, operations, closure, and special waste handling procedures have been reviewed and are on file with Metro.

(4) *The expected impact on the region's recycling and waste reduction efforts;*

The proposed NSL covers only putrescible waste, which has little recovery or recycling potential. Thus, the waste authorized by the proposed license is not expected to impact the region's recycling and waste reduction efforts.

(5) *The consistency of the designation with Metro's existing contractual arrangements;*

Metro has committed to deliver 90 percent of the total tons of putrescible waste that Metro delivers to general purpose landfills during the calendar year to landfills operated by Metro's waste disposal contract operator, Waste Management. This proposed NSL renewal is one of four similar licenses that will expire at the end of 2010. Provisions in the NSL allow Metro to monitor compliance with its disposal contract, as was covered in Section 1A of this report.

(6) *The record of the applicant regarding compliance with Metro ordinances and agreements or assistance to Metro in Metro ordinance enforcement and with federal, state and local requirements including but not limited to public health, safety and environmental rules and regulations;*

On August 31, 2007, Metro issued a Notice of Violation to WRI for violating the calendar year tonnage limitation stipulated in its existing NSL (No. N-005-005(3)). WRI had exceeded its 45,000-ton limitation by 342 tons. There was no penalty associated with this tonnage limit violation. Metro afforded WRI an opportunity to abate the violation by submitting a letter describing the additional procedures that it would implement to prevent a recurrence of the violation. WRI submitted the letter as requested and, subsequently, the violation was deemed abated. WRI is currently in compliance with its NSL.

With the exception of the above referenced violation, WRI has not had any other significant compliance issues regarding other Metro requirements during the term of the existing NSL. In addition, WRI has not had any violations related to public health, safety or environmental regulations during that time.

(7) *Such other factors as the Chief Operating Officer deems appropriate for purposes of making such determination.*

This criterion was examined above in Sections 1A and 1C of this report.

C. Anticipated/Potential Effects

This proposed NSL is one of many action items currently under consideration by Metro which is affected by potential declines in the amount of solid waste subject to the flow guarantee. Some decisions could have the effect of shrinking the pool of waste available for allocation. For instance, increased diversion from the landfill due to higher recovery or an improved organics program with the selection of a new transfer station operator could have such an impact. Decisions on these other action items have not yet been made so their potential impact on tonnage is not fully known at this point. The forecast of waste subject to the flow guarantee, which is the basis for the NSL tonnage authorizations, incorporates the best available information as of this writing.

Additionally, in 2009 staff noted that the granting of these types of NSLs had a potential financial impact on the regional solid waste system ratepayers through a "rate matching" effect. That is, Metro's tip fee is generally matched by private solid waste facilities in the region which results in increased costs to customers of private facilities. However, it appears that this rate matching effect will not be a factor in 2010. In 2009, Metro Council decided to limit Metro's 2010 rate increase at its transfer stations through a variety of methods (e.g., using reserve funds). Because of this decision, most privately-owned transfer stations now have tip fees above that of the current Metro rate; thus, mitigating the impact of rate matching in 2010.

D. Budget/Rate Impacts

As is generally known, the price that Metro pays for disposal at Columbia Ridge Landfill is a "declining block rate" — meaning that the more waste that is delivered to any landfill owned by Waste Management, the lower the per-ton cost paid by Metro. Based on projected tonnage and contract prices, allocating the uncommitted 77,000 tons to non-Waste Management landfills increases the Metro tip fee by \$0.86. Metro customers will pay \$534,000 more for disposal than if all of the uncommitted waste were to flow to Waste Management landfills. The practice of issuing these types of NSLs has been occurring under the Council's direction for the past nine years.

The Metro Regional System Fee and Excise Tax will continue to be collected on all waste delivered under authority of the proposed NSL. The application under consideration is the renewal of an existing NSL (No. N-005-09(3)B). Therefore, the financial impact has already been factored into the budget.

3. RECOMMENDED ACTION

Based on the information provided in this report, the COO recommends approval of Resolution No. 09-4090, finding that the proposed license satisfies the requirements of Metro Code Section 5.05.035, and renewal of an NSL substantially similar to the proposed NSL attached to the resolution as Exhibit A.

WJ:bjl
S:\REM\johnson\Facilities\WRI\NSL\Coffin Butte LFN-005-10(3)\WRI 09-4090_RES Stfpt_11132009.docx

Agenda Item Number 3.6

Resolution No. 09-4096, For the Purpose of Confirming the Reappointment of Members to the Nature in Neighborhoods Capital Grants Review Committee and Appointing a New Person in the Water Quality Specialist Position

Consent Agenda

Metro Council Meeting
Thursday, December 10, 2009
Metro Council Chamber

BEFORE THE METRO COUNCIL

CONFIRMING THE REAPPOINTMENT OF) RESOLUTION NO. 09-4096
MEMBERS TO THE NATURE IN NEIGHBORHOODS)
CAPITAL GRANTS REVIEW COMMITTEE AND) Introduced by Council President Bragdon
APPOINTING A NEW PERSON IN THE WATER)
QUALITY SPECIALIST POSITION.)

WHEREAS, on November 1, 2007, the Metro Council approved Resolution No. 07-3879, "Confirming the Appointment of Members to the Nature in Neighborhoods Capital Grants Review Committee;"

WHEREAS, three of the members were appointed to two-year terms and are eligible to serve two additional two-year terms;

WHEREAS, the member currently filling the position of Water Resources Specialist no longer wishes to serve on the committee, a new person must be appointed to fill that position;

WHEREAS, the Council President desires to reappoint the two current members of the committee and to appoint a new water resources specialist to the committee; now, therefore,

BE IT RESOLVED, that the Metro Council confirms the reappointments to the Nature in Neighborhoods Capital Grants Review Committee and the appointment of a new water resources specialist to the committee, as set forth in Exhibit "A" attached hereto.

ADOPTED by the Metro Council this _____ day of _____ 2009.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

Exhibit A to Resolution No. 09-4096

**Nature in Neighborhoods
Capital Grants Review Committee**

Committee Member Appointments

The following persons shall serve two-year terms, and be eligible thereafter to serve one additional two-year term:

Helena Huang	Independent Consultant, member of the Natural Areas Program Performance Oversight Committee
Jeri Williams	Program Manager for Diversity Leadership Programs, City of Portland, Office of Neighborhood Involvement
Gayle Killam	Protection and Restoration Program Director, River Network

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 09-4096, CONFIRMING THE REAPPOINTMENT OF MEMBERS TO THE NATURE IN NEIGHBORHOODS CAPITAL GRANTS REVIEW COMMITTEE AND APPOINTING A NEW PERSON IN THE WATER QUALITY SPECIALIST POSITION.

Date: December 10, 2009

Prepared by: Kathleen Brennan-Hunter
503-797-1948

BACKGROUND

The Natural Areas Bond Measure provides \$15 million for a Nature in Neighborhoods Capital Grants Program to provide local organizations and public entities with additional funds for land acquisition and projects that protect and enhance natural resources in the urban environment.

The Metro Council created a new Nature in Neighborhoods Capital Grants Review Committee in November 2007. The Capital Grants Review Committee consists of 9 members appointed by the Council President and confirmed by the Metro Council on November 1, 2007, by its approval of Resolution No. 07-3879, "Confirming the Appointment of Members to the Nature in Neighborhoods Capital Grants Review Committee."

Members of the committee are drawn from all areas of the region and from a variety of technical and professional disciplines, including water quality specialists, a fish biologist, and a landscape architect.

The grant review committee reviews grant applications that Metro staff has screened and makes recommendations for funding to the Metro Council. The Metro Council awards all grants under this program.

This Resolution reappoints two committee members, and appoints one new member to the committee to replace a member who no longer has the capacity to serve.

ANALYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

Metro Resolution No. 06-3672B, "For the Purpose of Submitting to the Voters of the Metro Area a General Obligation Bond Indebtedness in the Amount of \$227.4 Million to Fund Natural Area Acquisition and Water Quality Protection," approved by the Metro Council on March 9, 2006.

Metro Code Section 2.19.230, "Nature in Neighborhoods Capital Grants Review Committee," which section establishes the purpose, authority, and member appointment process for the committee.

Metro Resolution No. 07-3879, "Confirming the Appointment of Members to the Nature in Neighborhoods Capital Grants Review Committee," approved by the Metro Council on November 1, 2007.

Metro Resolution No. 07-3874, "Confirming the Appointment of the Chair of the Nature in Neighborhoods Capital Grants Review Committee," approved by the Metro Council on December 6, 2007.

3. **Anticipated Effects**

By approving resolution 09-4096, the Metro Council will reappoint two committee members whose terms have expired but wish to continue serving, and will appoint one new member to the committee. The expertise of these Committee members have helped ensure that grant funds are awarded to projects that best meet the goals and objectives of the Natural Areas Bond Measure.

4. **Budget Impacts**

There are no budget impacts.

RECOMMENDED ACTION

Staff recommends adoption of Resolution No. 09-4096.

Agenda Item Number 3.7

Resolution No. 09-4097, For the Purpose of Approving a Settlement Agreement with Waste Connections of Oregon, Inc., DBA Arrow Sanitary Service, Inc., and Waste Connections, Inc. Regarding Metro Notice of Violation Nos. NOV-227-09, NOV-228-09, and NOV-227A-09

Consent Agenda

Metro Council Meeting
Thursday, December 10, 2009
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF APPROVING A)	RESOLUTION NO. 09-4097
SETTLEMENT AGREEMENT WITH WASTE)	
CONNECTIONS OF OREGON, INC, DBA)	
ARROW SANITARY SERVICE, INC.,)	Introduced by Chief Operating Officer
AMERICAN SANITARY SERVICE, INC, AND)	Michael J. Jordan, with the concurrence of
WASTE CONNECTIONS, INC. REGARDING)	Council President David Bragdon
METRO NOTICE OF VIOLATION NOS. NOV-)	
227-09, NOV-228-09, AND NOV-227A-09)	

WHEREAS, in calendar year 2009, Arrow Sanitary Service, Inc. ("Arrow") violated Non-System License ("NSL") Nos. N-029-09A and N-029-09B and American Sanitary Service, Inc. ("American") violated NSL No. N-020-09A by exceeding the tonnage limitations contained therein; and

WHEREAS, Metro issued Notice of Violation Nos. NOV-227-09 and NOV-227A-09 to Arrow and NOV-228-09 to American for these violations; and

WHEREAS, Arrow and American submitted to Metro a timely request for a contested case hearing regarding NOV-227-09 and NOV-228-09; and

WHEREAS, Arrow and American disputed the imposition of a penalty in NOV-227-09 and NOV-227A-09; and

WHEREAS, the Director of Finance and Administrative Services ("Director") and Arrow, American, and Waste Connections, Inc. have agreed to the terms of a settlement under which payment of \$44,500.00 will be paid to Metro; and

WHEREAS, Metro Code Section 2.03.090 requires the Council to approve any settlement of unpaid civil penalties executed by the Director; and

WHEREAS, the Deputy Chief Operating Officer ("DCOO") recommends that Metro fully settle NOV-227-09, NOV-227A-09, and NOV-228-09; now therefore

BE IT RESOLVED that the Metro Council approves the proposed settlement and authorizes the DCOO to enter into a settlement agreement substantially similar to the document attached as Exhibit A.

ADOPTED by the Metro Council this _____ day of _____, 2009.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made and entered into as of the last date of signature indicated below, by and between Metro, a metropolitan service district and municipal corporation of the State of Oregon, organized under Oregon Revised Statutes Chapter 268 and the Metro Charter, located at 600 NE Grand Avenue, Portland, Oregon 97232 ("Metro") and Waste Connections of Oregon, Inc., an Oregon corporation d/b/a Arrow Sanitary Service ("Arrow"), located at 12820 NE Marx, Portland, Oregon 97230, American Sanitary Service, Inc. ("American"), an Oregon corporation, and Waste Connections, Inc., a Delaware corporation (collectively the "Parties").

RECITALS

- A. On August 3, 2009, Scott Robinson, Metro Deputy Chief Operating Officer ("DCOO"), issued Notice of Violation No. 227-09 ("NOV-227-09") to Arrow. Based on an investigation conducted by Metro, the DCOO found that Arrow violated its Non-System License No. N-029-09A and issued a penalty of \$36,891.74.
- B. Arrow admitted that it violated Non-System License No. N-029-09A by exceeding the tonnage limitation. Arrow disputed the DCOO's imposition of a penalty of \$36,891.74.
- C. On August 3, 2009, the DCOO issued Notice of Violation No. 228-09 ("NOV-228-09") to American. Based on an investigation conducted by Metro, the DCOO found that American violated its Non-System License No. N-020-09A and issued a penalty of \$888.38.
- D. American admitted that it violated Non-System License No. N-020-09A by exceeding the tonnage limitation. American disputed the DCOO's imposition of a penalty of \$888.38.
- E. On November 2, 2009, the DCOO issued Notice of Violation No. 227A-09 ("NOV-227A-09") to Arrow. Based on an investigation conducted by Metro, the DCOO found that Arrow violated its Non-System License No. N-029-09B and issued a penalty of \$36,851.86.
- F. The Parties enter into this Agreement to fully settle and compromise this dispute.

NOW, THEREFORE, in reliance on the above recitals and in consideration of the mutual promises described below, the adequacy of which the Parties hereby acknowledge, the Parties agree as follows:

1. Metro's Release of Further Enforcement Action. Metro hereby releases, acquits, and forever discharges its authority to pursue further enforcement action against Arrow and American for the violations alleged in NOV-227-09, NOV 227A-09, and NOV-228-09. The Parties do not intend that the release, acquittal, and discharge provided for in this paragraph shall release, acquit, or discharge any other claim, right, or cause of action or any claim, right, or cause of action for violation of the terms of this Agreement.

2. Arrow, American, and Waste Connections' Release and Covenant Not to Sue. In consideration for the provisions of this Agreement, Arrow, American, and Waste Connections and their executors, administrators, successors and assigns, fully and forever release, acquit and discharge Metro and Metro's administrators, successors, agents, employees, and assigns from any and all claims, demands, damages, causes of action, and any and all known and unknown personal injuries, property damages and claims accruing on or before December 31, 2009. Arrow, American, and Waste Connections agree not to lodge, file or bring any suit, charge, complaint, contested case request, or any other form of action against Metro for any injury accruing on or before December 31, 2009 and relating in any way whatsoever to any matters released herein. This release and covenant not to sue includes without limitation any challenge to the design and issuance of the Arrow and American's 2010 non-system licenses (NSL 029-10 and NSL 020-10), as proposed by Metro staff on November 13, 2009, so long as Metro enforces the NSLs in accordance with the terms contained therein. This release and covenant not to sue assumes that Metro will not amend N-029-09C and N-020-09C.
3. Metro's Use of NOV-227-09, NOV 227A-09, and NOV-228-09. Metro may use NOV-227-09, NOV 227A-09, and NOV-228-09 in any formal or informal evaluation or proceeding conducted by Metro and related to the parties.
4. Payment to Metro and Agreement to Comply with NSL. In return for the releases described herein and for other valuable consideration that Arrow, American, and Waste Connections hereby acknowledge, Arrow, American, and Waste Connections shall pay to Metro the sum of \$44,500.00. This amount is a debt owed to Metro and shall be made in full by January 10, 2010. If the payment is not made, Metro may initiate suit for the collection of this debt and shall be entitled to simple interest at the rate of six percent (6%) per year calculated from January 10, 2010, until the debt is paid in full. If Metro must initiate suit for the collection of this debt, the prevailing party in such suit shall be entitled to reasonable attorney fees incurred in such an action, through and including attorney fees incurred on appeal. In addition, Arrow and American agree to comply with the terms of N-029-09C and N-020-09C.
5. Modification and Waiver. This Agreement shall not be modified unless such modification is in writing and signed by all of the Parties. No provision of this Agreement shall be considered waived by any Party unless such a waiver is made in writing signed by the Party making the waiver. Waiver of any provision of this Agreement shall not affect the enforceability of any other provision of this Agreement.
6. Attorney Fees. If any suit or action is brought to enforce or interpret this Agreement, the prevailing Party shall be entitled to recover from the other Party reasonable attorney fees and other costs incurred by the prevailing Party at trial or on appeal.
7. Choice of Law. This Agreement shall be construed, applied, and enforced in accordance with the laws of the State of Oregon.

8. Severability. If any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect, the validity of the remaining provisions contained in this Agreement shall not be affected.
9. Entire Agreement. This Agreement is the entire agreement between the Parties.
10. Voluntary Agreement. Each Party hereby declares and represents that it fully understands the terms of this Agreement, that it has had ample opportunity to review this Agreement and solicit and receive the advice of its own legal counsel, and that it voluntarily enters into this Agreement.
11. Authority to Enter Into This Agreement and Signatory Authority. Each Party hereby declares and represents that it has the legal power, right, and authority to enter into this Agreement. The individuals signing below warrant that they have full authority to execute this Agreement on behalf of the Party for which they sign.
12. Execution in Counterparts. This Agreement may be executed in counterparts, each of which constitutes an original and all of which together are deemed a single document.

**Waste Connections of Oregon, Inc. d/b/a
Arrow Sanitary Services, Inc.
American Sanitary Service, Inc.
Waste Connections, Inc.**

Metro

By: _____
Rob Nielsen

Regional Vice President,
Waste Connections, Inc.

By: _____
Scott Robinson

Deputy Chief Operating Officer

Date: _____

Date: _____

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STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 09-4097 APPROVING A SETTLEMENT AGREEMENT WITH WASTE CONNECTIONS, INC. REGARDING METRO NOTICES OF VIOLATION NO. NOV-227-09 AND NOV-227A-09 ISSUED TO ARROW SANITARY SERVICE, INC. AND NOV-228-09 ISSUED TO AMERICAN SANITARY SERVICE, INC.

November 30, 2009

Prepared by: Steve Kraten

Arrow Sanitary Service, Inc. ("Arrow") and American Sanitary Service, Inc. ("American") are Waste Connections, Inc. ("WCI") - owned hauling companies with Metro Non-System Licenses ("NSLs") authorizing them to deliver solid waste to their affiliated transfer stations located in Clark County, Washington. During the first three quarters of 2009, Arrow violated its tonnage limit twice and American violated its tonnage limit once. Metro subsequently issued Notices of Violations and imposed monetary penalties. This proposed resolution approves a settlement to resolve these issues.

BACKGROUND

NSLs are the main vehicles by which Metro manages its contractual obligation to deliver a minimum of 90 percent of the region's putrescible waste that is delivered to general purpose landfills during the calendar year, to landfills owned by Waste Management.

System of allotting 2009 NSL tonnage authorizations

On December 11, 2008, the Metro Council adopted a series of resolutions that established an approach for evaluating applications and determining tonnage authorizations for certain NSLs pertaining to putrescible waste during 2009. This approach was established to manage Metro's contractual obligations, especially when regional tonnage remained low and uncertain during the current economic downturn. Each of the following elements of the approach contributed toward the goal of managing the ten percent of waste not obligated under Metro's disposal contract:

- Each non-system licensee received a maximum tonnage limit for the calendar year which, summed across all licenses, did not exceed 9.5 percent of the total tonnage subject to the flow guarantee based on Metro's tonnage forecast for 2009.
- Upon issuance of the NSLs, each licensee immediately received 50 percent of the total tonnage authorized under the license for use during the first six months of 2009. The Chief Operating Officer ("COO") then released additional tonnage, as available, to each licensee for use during the third and fourth quarters of 2009, thereby establishing intermediate tonnage limitations.
- In letters dated May 21, 2009, WCI requested NSL tonnage increases for Arrow and American. In a response dated June 24, 2009, Metro denied the requests, citing a declining trend in regional tonnage and a concern that granting the request could

potentially conflict with Metro's obligation to deliver 90 percent of the region's putrescible waste to landfills owned by Waste Management.

Arrow and American 2009 NSL Tonnage Limit Violations

Arrow and American violated their quarterly tonnage allocations as follows:

- For the first and second quarters of 2009, Arrow's NSL authorized it to deliver up to 16,510 tons of solid waste to its own transfer stations. However, by the end of the second quarter of 2009, Arrow reported delivering a total of 19,779.16 tons of Metro area waste to the Clark County transfer stations, thus exceeding its NSL limit by 3,269.16 tons.
- For the first and second quarters of 2009, American's NSL authorized it to deliver up to 2,421 tons of solid waste to its own transfer stations. However, by the end of the second quarter of 2009, American reported delivering a total of 2,463.53 tons of Metro area waste to the Clark County transfer stations, thus exceeding its NSL limit by 42.53 tons.
- For the third quarter of 2009, Arrow's NSL authorized it to deliver up to 4,986 tons of solid waste to its own transfer stations. However, by the end of the third quarter of 2009, Arrow reported delivering a total of 9,805.34 tons of Metro area waste to the Clark County transfer stations, thus exceeding its third quarter NSL limit by 4,819.34 tons.

Notices of Violations Issued to Arrow and American by Metro

The Notices of Violations Metro issued to Arrow and American for their NSL tonnage limit violations during the first three-quarters of 2009 are summarized below:

- Metro issued Notice of Violation No. NOV-227-09 to Arrow and Notice of Violation No. NOV-228-09 to American for the above mentioned tonnage limit violations, imposing a penalty of \$36,891.74 against Arrow and \$888.38 against American. Also, as a result of these violations, Arrow's limit for the third quarter was reduced by 3,269 tons and American's was reduced by 43 tons.
- Metro issued Notice of Violation No. NOV-227A-09 to Arrow for the third quarter tonnage limit violations, imposing a penalty of \$36,851.86. Metro also reduced the tonnage limit for the fourth quarter by 4,875 tons prior to issuing the NOV. American did not exceed its NSL tonnage limit during the third quarter of 2009.

In a hearing held by Metro's contract Hearings Officer on September 28, 2009, regarding NOV-227-09 and NOV-228-09, WCI contested the penalties based on its assertion that Metro acted unreasonably in denying written requests that WCI made on May 21, 2009 to increase the tonnage limits on Arrow's and American's NSLs. In a proposed Final Order issued October 26, 2009, the Hearings Officer found in favor of Metro. WCI then sought to negotiate a settlement with Metro, regarding these two NOVs and NOV No. NOV-227A-09. Contingent upon Council approval, Metro and WCI agrees to settle the matter of the three Notices of Violation for the sum of \$44,500.00. In addition, this agreement resolves other pending issues, including WCI

granting Metro full release for any injury through December 31, 2009. In the agreement, WCI agrees to abide by the terms of the 2009 NSLs and forego any challenge to the design and issuance of the 2010 NSLs. In a meeting held on October 20, 2009 between WCI officials and Metro's Deputy COO, Scott Robinson, WCI's Regional Vice President Rob Nielson agreed to honor the yearly tonnage limit stipulated in the Arrow and American NSLs by diverting loads to facilities authorized to accept such waste.

ANALYSIS/INFORMATION

1. Known Opposition

There is no known opposition to the proposed settlement.

2. Legal Antecedents

Metro Code Section 2.03.090 provides that, after the COO (or his designee) issues a Notice of Violation assessing a civil penalty, any settlement that compromises or settles the assessed civil penalty must be approved by the Metro Council.

3. Anticipated Effects

The effect of Resolution No. 09-4097 will be to approve a settlement wherein Metro agrees not to pursue enforcement on the NOV's issued by Metro in 2009 in exchange for WCI paying Metro the sum of \$44,500.00. In the settlement agreement, WCI grants Metro a full release for any injury, known or unknown, through December 31, 2009; agrees to abide by the terms of the 2009 NSLs; and forgoes any challenge to the design and issuance of the 2010 NSLs.

The 2010 WCI NSLs are being presented to the Council for consideration under Resolutions 09-4089 and 09-4087, which authorize putrescible waste tonnage in 2010.

4. Budget Impacts

This settlement will result in an additional \$44,500 to the solid waste fund that was not anticipated when the FY 2009-10 budget was adopted. The settlement funds will be deposited in the Solid Waste Revenue Fund account and can be made available for expenditure in the current fiscal year or future fiscal years.

RECOMMENDED ACTION

The COO recommends approval of Resolution No. 09-4097, approving a Settlement Agreement with WCI substantially similar to the Settlement Agreement attached to the resolution as Exhibit A.

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Agenda Item Number 4.1

Resolution No. 09-4094, For the Purpose of Accepting the Population and
Employment Forecasts and the Urban Growth Report as Support for
Determination of Capacity of the Urban Growth Boundary

COUNCILOR HOSTICKA

Metro Council Meeting
Thursday, December 10, 2009
Metro Council Chamber

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ACCEPTING THE)	RESOLUTION NO. 09-4094
POPULATION AND EMPLOYMENT)	
FORECASTS AND THE URBAN GROWTH)	
REPORT AS SUPPORT FOR)	Introduced by Chief Operating Officer
DETERMINATION OF CAPACITY OF THE)	Michael Jordan with the Concurrence of
URBAN GROWTH BOUNDARY)	Council President David Bragdon

WHEREAS, state law requires Metro to determine the capacity of the urban growth boundary (UGB) to accommodate the next 20 years' worth of population and employment growth by the end of December, 2009; and

WHEREAS, the Metro Council will direct its efforts to provide capacity for the next 20 years' worth of growth toward achieving the Outcomes that are part of its overall Making the Greatest Place initiative, as indicated by performance measures; and

WHEREAS, Metro published range forecasts of population and employment growth to the years 2030 and 2060 on March 19, 2009; and

WHEREAS, Metro published a preliminary analysis of the capacity of the existing UGB to accommodate the range of new dwelling units relating to the range of forecast population growth on March 31, 2009; and

WHEREAS, state law requires Metro to provide capacity to encourage the availability of dwelling units at price ranges and rent levels, and of transportation choices, that are commensurate with the financial capabilities of households expected over the planning period; and

WHEREAS, Metro published a preliminary Housing Needs Analysis on April 22, 2009, that showed the effects on housing affordability and household transportation costs of forecast growth under existing policies and investment levels; and

WHEREAS, Metro published a preliminary analysis of the capacity of the existing UGB to accommodate the range of new employment relating to the range of forecast employment growth on May 6, 2009; and

WHEREAS, the region has an interest in an adequate supply of land appropriate for industries that prefer larger tracts of land near transportation facilities and an interest in efficient use of existing land and transportation facilities; and

WHEREAS, Metro sought and received comments on the preliminary analyses of housing and employment capacity from its Metro Policy Advisory Committee (MPAC) and its Joint Policy Advisory Committee on Transportation (JPACT), local governments in the region, public, private and non-profit organizations and citizens; and

WHEREAS, Metro considered the comments and published revised draft analyses of the capacity of the existing UGB to accommodate growth to year 2030 on September 15, 2009; and

WHEREAS, Metro sought and received comments on the revised draft analyses from MPAC and JPACT; local governments in the region; and public, private and non-profit organizations and citizens; and

WHEREAS, the Metro Council held open houses and public hearings on the revised draft analyses on September 21, 22 and 24 and October 1, 8 and 15, 2009; and

WHEREAS, Metro considered comments received and made revisions to the final draft analyses of the capacity of the existing UGB to accommodate the range of new dwelling units and employment relating to the range of forecast population and employment growth; now, therefore,

BE IT RESOLVED that the Metro Council

1. The Council accepts the “20 and 50 year Regional population and employment forecasts” incorporated into the “Draft Urban Growth Report 2009-2030”, dated September 15, 2009, as revised by this resolution, as a basis for analysis of need for capacity in the UGB to accommodate growth to the year 2030 and for actions the Council will take to add capacity by ordinance in 2010, pursuant to ORS 197.296(6) and statewide planning Goal 14.
2. The Council accepts the “Draft Urban Growth Report 2009-2030”, dated September 15, 2009, with its analysis of housing needs, attached and incorporated into this resolution as Exhibit A, with the revisions described in the Staff Report dated December 3, 2009, attached as Exhibit B, as a basis for analysis of need for capacity in the UGB to accommodate growth to the year 2030 and for actions the Council will take to add housing and employment capacity by ordinance in 2010, pursuant to ORS 197.296(6) and statewide planning Goals 14 and 10.
3. The Council directs the staff to work with MPAC to identify site opportunities for industries that prefer large tracts, with a priority to mechanisms to remediate brownfields and assemble smaller parcels inside the UGB to make them more “market-ready.”
4. Acceptance of Exhibit A by the Council meets Metro’s responsibility under state law to analyze the capacity of the UGB to accommodate growth to the year 2030 as a preliminary step toward providing sufficient capacity to accommodate that growth. The Council will make a final land use decision to respond to this capacity analysis in 2010.
5. The Council directs the Chief Operating Officer to submit Exhibit A , together with such actions the Council adopts by ordinance to add any needed capacity pursuant to ORS 197.296(6) and statewide planning Goal 14, to the Land Conservation and Development Commission as part of periodic review pursuant to ORS 197.626, following adoption of the capacity ordinance in 2010.

ADOPTED by the Metro Council this 10th day of December, 2009

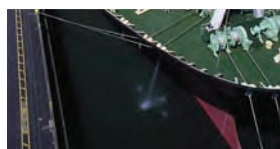
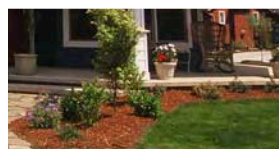
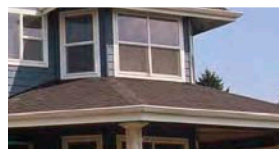
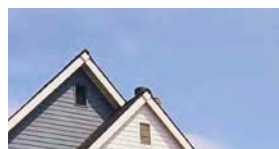
David Bragdon, Council President

Approved as to form:

Daniel B. Cooper, Metro Attorney

CLICK HERE FOR REPORT

September 15, 2009
Employment and residential



DRAFT URBAN GROWTH REPORT

2009 — 2030

Employment and residential

September 15, 2009

CLICK HERE FOR REPORT

Resolution 09-4094

September 15, 2009 Exhibit A

Employment and residential



DRAFT URBAN GROWTH REPORT

2009 — 2030

Appendices 2 - 13

September 15, 2009

EXHIBIT B STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 09-4094, FOR THE PURPOSE OF
ACCEPTING THE POPULATION AND EMPLOYMENT FORECASTS AND THE URBAN
GROWTH REPORT AS SUPPORT FOR DETERMINATION OF CAPACITY OF THE
URBAN GROWTH BOUNDARY

Date: December 3, 2009

Prepared by: Malu Wilkinson, x1680

BACKGROUND

Purpose of the forecast and the urban growth report

Oregon land use law requires that, every five years, Metro assess the region's capacity to accommodate the numbers of people anticipated to live or work inside the Metro urban growth boundary (UGB) over the next 20 years. To make this determination, Metro forecasts population and employment growth over a 20-year timeframe; conducts an inventory of vacant, buildable land inside the UGB; assesses the capacity of the current UGB to accommodate population and employment growth either on vacant land or through redevelopment and infill; determines whether additional capacity is needed; and documents the results of these analyses in an urban growth report (UGR). The UGR is the basis for subsequent consideration of the actions to be taken to close any identified capacity gap.

On the advice of the Metro Policy Advisory Committee, the Metro Council has indicated its intent to take an outcomes-based approach to assessing growth management options in 2010. It is intended that growth management decisions will help to foster the creation of a region where:

1. People live and work in vibrant communities where they can choose to walk for pleasure and to meet their everyday needs.
2. Current and future residents benefit from the region's sustained economic competitiveness and prosperity.
3. People have safe and reliable transportation choices that enhance their quality of life.
4. The region is a leader in minimizing contributions to global warming.
5. Current and future generations enjoy clean air, clean water and healthy ecosystems.
6. The benefits and burdens of growth and change are distributed equitably.

Should the Metro Council vote in favor of this resolution, it would be accepting the UGR and 20-year forecast as a reasonable and complete basis for making growth management decisions in 2010. By this resolution, the Council would also be accepting the 50-year forecast as a basis for designating urban and rural reserves. Council acceptance of the forecasts and the UGR does not constitute a land use decision, but provides a platform for subsequent growth management decisions.

Summary of forecast and UGR findings

Population and employment range forecast

20-and-50-year range forecasts of population and employment growth have been completed by Metro staff and peer reviewed by economists and demographers. The 20-year range forecast informs the UGR

and the 50-year range forecast informs the Urban and Rural Reserves process. The use of a range forecast acknowledges uncertainty and allows for growth management decisions to focus on desired outcomes rather than a specific number. The forecast is for the seven-county primary metropolitan statistical area, which includes Clackamas, Multnomah, Washington, Yamhill, Columbia, Clark, and Skamania counties.

The 20-year forecast indicates that, by the year 2030, there will be a total of 1,181,300 to 1,301,800 households and a total of 1,252,200 to 1,695,300 jobs in the larger seven-county area. There is a 90 percent chance that growth will occur within this range.

The 50-year forecast indicates that, by the year 2060, there will be a total of 1,478,400 to 1,792,500 households and a total of 1,648,400 to 2,422,900 jobs in the larger seven-county area. There is a 90 percent chance that growth will occur within this range.

In his September 15, 2009 recommendation, Metro's Chief Operating Officer, Michael Jordan, recommended that growth management decisions made by the Council in 2010 focus not on the extreme ends of the range forecast, but on the middle third of the forecast range.

Urban Growth Report

In addition to the 20-year range forecast, the UGR includes an analysis of the share of the UGB's zoned capacity that is likely to be developed by the year 2030. The UGR's analysis assumes a continuation of current policies and investment trends. No changes to existing zoning are assumed, although it is likely that up-zoning will take place in the future as communities develop and implement their aspirations. The UGR's assessment of the likelihood of development is based on historic data, scenario modeling, and the professional expertise of Metro staff, local city and county staff, economic consultants, and business representatives. UGR results are portrayed for four different categories--residential, general industrial employment, general non-industrial employment, and large lot employment—that are summarized as follows:

Residential capacity

There is ample zoned capacity within the current UGB to accommodate the next 20 years of residential growth. However, the UGR's analysis indicates that, without additional infrastructure investments or other policy changes, insufficient zoned capacity will be available for development. At both ends of the range forecast (high and low) there is a gap in the UGB's capacity to accommodate the next 20 years of residential growth on vacant land or through redevelopment and infill (refill). Depending on the amount of residential growth that may be realized, the UGR finds demand for additional capacity to accommodate 27,400 to 104,900 dwelling units.

The UGR also includes an assessment of future cost-burdened households in the region. The assessment defines a household as cost-burdened if they rent and spend more than half of their after-tax income on housing and transportation expenditures. If current policy and investment trends are continued, the number of cost-burdened households in the region may double by the year 2030. Under that scenario, between 17 to 23 percent of all households inside the Metro UGB may be cost-burdened. This would represent between 51 to 69 percent of renter households. This analysis also finds that, as is the case today, there are likely to be concentrations of cost-burdened households in some communities and very few in others. Centers and corridors provide residents with the most affordable transportation options, but high market demand in those locations is likely to continue driving housing prices upwards. Investing in housing and transit in centers and corridors is one way of closing the residential capacity gap and reducing the number of cost-burdened households.

General industrial employment capacity

This portion of the UGR assesses the current UGB's capacity to accommodate industrial job growth on vacant land or through redevelopment and infill (refill). The assessment of demand for large, vacant lots is handled separately. The UGR finds that, at both ends of the employment range forecast, there is adequate capacity inside the current UGB to accommodate the next 20 years of general industrial job growth.

General non-industrial employment capacity

This portion of the UGR assesses the current UGB's capacity to accommodate non-industrial (e.g. office, retail, institutional) job growth on vacant land or through refill. The analysis indicates sufficient zoned capacity, but a need to make investments or policy changes to support the high end of the demand range. Depending on the amount of non-industrial employment growth that is realized, the UGR finds that there is demand for zero to 1,168 acres of additional capacity for non-industrial employment.

Large lot employment capacity

The "large lot" portion of the UGR's analysis was completed in recognition of the fact that some firms in traded-sector industries prefer or require large, vacant lots. The UGR defines a large lot as a single taxlot with at least 25 acres of vacant, buildable area. Demand for large lots is likely to be the product of the decisions of individual firms rather than larger industry sector trends. The UGR's forecast-based assessment originally determined that, over the 20-year period, there is demand for 200 to 800 acres of additional capacity for large-lot employment uses. This range depends on the amount of employment growth realized as well as whether assembly of adjacent lots of 25 acres or more was assumed.

For several reasons listed below, at its November 18, 2009 meeting, the Metro Policy Advisory Committee (MPAC) recommended that the UGR identify a wider range of potential large lot demand:

- Large lot demand will be the result of the decisions of individual firms, so it is inherently difficult to forecast.
- Some cities in the region have identified large, traded-sector firms as the focus of their economic development plans.
- It may be preferable from a policy standpoint to have flexibility to accommodate traded-sector firms.
- The use of an employment forecast may be an inadequate means of estimating large lot demand for freight, rail, and marine terminal uses.

Consequently, MPAC has recommended that the UGR identify a demand for 200 to 1,500 acres of additional capacity for large-lot industrial uses. This demand may be satisfied through a variety of means, including brownfield cleanup, infrastructure investments, taxlot assembly, or UGB expansions.

Process for writing the forecast and the urban growth report

Process overview

The forecast and UGR have been written and revised over the course of over a year and are informed by the expertise of economic consultants and Metro staff, business focus groups, comments from numerous stakeholders, advisory committee input, a panel of economic advisors, scenario modeling, and historic data. The analyses have benefited from this extensive review.

Expert review of the population and employment forecast

The national data that drives the regional forecast comes from IHS Global Insight, an internationally respected economics firm whose data is relied upon by numerous public and private entities. Metro's

econometric model, which is used to create the regional population and employment forecast, has been subjected to considerable expert scrutiny over the years. A November 24, 2009 memo from Metro's Chief Economist, to Malu Wilkinson, Metro Principal Regional Planner, describes recent peer reviews of the forecast model and its results and is included as Attachment 3 to this staff report.

In 2006, a panel of economic advisors was convened to evaluate Metro's econometric model and forecasts. The panel included:

- Tim McDaniels, professor and interim director, Institute of Resources and Environment, School of Community and Regional Planning, University of British Columbia
- Marshall Vest, economist and director of the Economic and Business Research Center at the University of Arizona's Eller College of Management
- Tom Potiowsky, State Economist for the State of Oregon

The panel of economic advisors reviewed the model's equations, overall statistical fit and results, finding:

- The Metro econometric model is one of the more advanced regional econometric models in the country and that it exhibits sound economic theory.
- The Metro econometric model is the right type of model for the purposes for which it is used.
- It is appropriate to use national economic projections from IHS Global Insight to drive the regional forecast. It was noted that the State of Oregon also uses IHS Global Insight data in preparing the biennial budget.
- In the context of performing risk analysis, a range forecast can be superior to a single point forecast.

A Public Review Draft 2005-2060 Regional Population and Employment Forecast was released on May 19, 2008. Accompanying this release, Metro hosted a panel discussion of the forecast. To inform the UGR, a preliminary 20 and 50-Year Regional Population and Employment Forecast was released in March 2009. This newer forecast incorporates the short-and long-term effects of the current recession. During the summer of 2009, the forecast was subjected to a peer review by local economists and demographers. The peer review panel found the forecast range to be reasonable and generally felt that actual growth may end up in the lower to middle portion of the range, but that, as a policy matter, it may be beneficial to plan somewhere in the higher portion of the employment range forecast. Peer review comments were addressed in a draft forecast released in September 2009. These changes did not involve amendments to the forecast's data.

External expertise that informed the employment analysis

To complete the employment analysis portion of the UGR, Metro staff worked with a consultant team led by E.D. Hovee and Co. that included FCS Group, Bonnie Gee Yosick, and Davis Hibbits Midghall, well-respected economic and public opinion consulting firms. Metro staff also formed the Employment Coordination and Advisory Committee (ECAC), which consisted of representatives from local city staff, business advocacy groups, the Port of Portland, and the Portland Development Commission. ECAC met on multiple occasions to provide comments and input on the UGR. Additionally, from December 2008 through February 2009, business representatives were included in focus groups that discussed the region's opportunities and challenges in fostering job growth.

Preliminary versions of analyses released for comment

In order to solicit early feedback, Metro staff released: a preliminary population and employment forecast and a preliminary residential UGR in March 2009; a preliminary housing needs analysis in April 2009;

and a preliminary employment UGR in May 2009. To the extent possible, comments received on the preliminary forecast, preliminary UGRs, and the preliminary housing needs analysis were addressed in the draft forecast and draft UGR, which were released in September 2009.

Metro advisory committee involvement

For over a year, MPAC, the Joint Policy Advisory Committee on Transportation (JPACT), and the Metro Technical Advisory Committee (MTAC) have been engaged in discussions of the UGR and possible growth management strategies. Beginning in September 2008, MPAC and JPACT considered the demographic changes that may impact residential growth and how the region plans to address population growth. This included a presentation on the topic by a visiting national scholar, Dr. Arthur (Chris) Nelson. During fall 2008, staff also presented to MPAC and JPACT the results of a series of “cause and effect” scenarios intended to illustrate the potential effectiveness of several different growth management and investment strategies. These “cause and effect” scenarios were also presented to the Transportation Policy Advisory Committee (TPAC) and to MTAC in an extended session.

Throughout the spring and summer of 2009, MTAC discussed the forecast, the preliminary UGRs and the preliminary housing needs analysis. During the summer of 2009, MTAC held two, three-hour-long sessions devoted entirely to discussing the preliminary analyses. These longer sessions were in addition to regular MTAC meetings where the forecast and the UGR were frequent agenda items. At the longer MTAC sessions, MTAC made recommendations on the UGR that were addressed in the draft UGR, which was released in September 2009.

MPAC discussed the forecast, UGR, and housing needs analysis on multiple occasions during the spring and summer of 2009. Several MPAC meetings included small group discussion formats to allow for more in-depth dialogue. At an October 23, 2009 retreat, MPAC took up the topic of the forecast and the draft UGR for four hours. Eric Hovee, the economic consultant who assisted in the UGR’s employment analysis, was available at the retreat to answer questions posed by MPAC.

Additional stakeholder and public comment

Throughout 2009, the Metro Council and Metro staff have also engaged with numerous stakeholders on the topics of the forecast and the UGR. These meetings have included business interest groups, elected officials, land use planning advocacy groups, housing affordability advocacy groups, and city and county staff.

To solicit comments on the draft UGR (and other elements of the *Making the Greatest Place* initiative), seven open houses and five public hearings were held in locations throughout the region in September and October 2009. During this public comment period, comments were received in writing, as oral testimony, and electronically.

Comments received on the draft UGR

Because the UGR makes projections regarding future conditions, it elicits a variety of strong opinions from different perspectives. Staff believes that the forecast and UGR are based on sound and careful analysis and that the outstanding differences of opinion expressed by some cannot be reconciled with additional technical analysis. To aid the Council in its consideration of the completeness of the forecast and UGR, comments received on the draft UGR and staff responses are summarized in Attachment 1 to this staff report. To the extent possible or appropriate, staff has addressed comments in the final urban growth report. The general nature of comments is summarized below.

Business advocacy groups, the Port of Portland, Washington County, and the cities of Hillsboro, Cornelius, and Forest Grove have called for more optimistic employment forecasts (particularly in the high-tech manufacturing sector), higher capture rates¹, and lower refill rates². These stakeholders have also suggested that the UGR's analysis should more fully take into account the site characteristics sought after by specific industry sectors. Finally, these stakeholders have requested that the UGR incorporate the conclusions of Economic Opportunity Analyses recently conducted by several cities.

The Homebuilder's Association of Metropolitan Portland disagrees with some of the UGR's assumptions and conclusions. Most notably, they find infeasible the 33 percent residential refill rate assumed in the UGR.

The cities of Portland, Lake Oswego, and Wilsonville as well as land use and housing affordability advocacy groups have expressed confidence in the analysis, calling for a focus on making more efficient use of the UGB's existing capacity and pointing to the need to take measures that address a changing economy, shifting demographics, climate change, brownfield cleanup, and housing affordability.

Comments from the general public typically focused on UGB decisions that the Council may consider in 2010 (rather than providing comments on the forecast and UGR analyses themselves). Those public comments were overwhelmingly in favor of making more efficient use of the region's existing capacity.

All of these discussions and comments have resulted in improvements to the final UGR's technical assumptions and its framing of policy choices. The revisions and technical corrections that Metro staff recommends making to the September 15, 2009 Draft UGR are summarized in Attachment 2 to this staff report.

Staff recommends two noteworthy revisions to the analysis. The first revision is the expansion of the range of additional capacity that may be demanded for large lot industrial uses (revised from 200-800 acres to 200-1,500 acres), as unanimously recommended by MPAC. The second is a revision to the estimate of acres that may be demanded for future parks, which, to a small degree, reduces the current UGB's residential capacity. This revision for future park acreage uses the approach recommended by MPAC in 2002, but provides an updated estimate that correlates to the current population forecast.

MPAC recommendation

On November 18, 2009, the UGR and forecast were taken up as an action item by MPAC. MPAC recommended several additions to the language of the resolution that is before the Council. MPAC's key additions to the resolution are a specific reference to the importance of addressing housing affordability and the need to focus on brownfield cleanup and lot assembly to address large lot industrial demand. MPAC also recommended a revision to the UGR's estimate of large-lot demand, which was discussed earlier in this staff report. With those revisions, MPAC unanimously recommended that the Metro Council vote in favor of this resolution.

Next steps

If the Metro Council votes in favor of this resolution, it accepts the forecast and the UGR as complete. The Council is not yet making a decision on where within the demand ranges to plan or whether to make

¹ Capture rate refers to the share of the larger 7-county area's population or employment growth that is expected to come to the Metro UGB.

² Refill rate refers to the share of future residential or employment development that occurs through redevelopment or infill.

a UGB expansion. During 2010, Metro staff will work with cities in the region to identify new policies or investments that increase the capacity of the current UGB (e.g. zoning) or increase the likelihood that capacity in the current UGB will be developed in the next 20 years (e.g. investments in centers, corridors, employment and industrial areas, and recent UGB expansion areas). Only policies or investments that are formally adopted or approved can be considered. The effects of those actions will be assessed by the end of 2010, when the Metro Council considers the adoption of a capacity ordinance. Any remaining capacity gap would need to be addressed through UGB expansions.

2010: At least 50 (and up to 100) percent of any capacity need must be addressed by the end of 2010. Any capacity need that is being addressed through efficiency measures inside the current UGB must be identified.

2011: The end of 2011 is the State deadline for making UGB expansions, if needed.

ANALYSIS/INFORMATION

1. Known Opposition

Business interest groups, the Port of Portland, several cities in Washington County, and Washington County itself previously indicated that the September 15, 2009 Draft UGR did not identify a large enough gap in the UGB's capacity to accommodate employment growth. A particular focus of their criticism of the UGR has been large-lot employment demand, which these stakeholders contend is underestimated in the UGR to the detriment of the region's future economic health. MPAC has recommended a revision to the range of capacity demanded for large-lot employment uses. This revision has satisfied cities in Washington County with seats at MPAC, but Metro staff is unaware whether this revision satisfies all others who have voiced concern.

2. Legal Antecedents

The forecast and UGR are completed to satisfy:

- Statewide Planning Goals 10 (Housing) and 14 (Urbanization)
- Oregon Revised Statutes 197.296, 197.299, and 197.303 (Needed Housing in Urban Growth Areas)
- Oregon Administrative Rules, Division 24 (Urban Growth Boundaries)
- Metro Regional Framework Plan, Chapter 1 (Land Use)
- Metro Code, section 3.01.020(a) and (b)

3. Anticipated Effects

Council acceptance of the forecast and UGR will allow Metro to meet its legal requirements under State law and to begin work identifying the possible policy options to consider in 2010 to enable the region to achieve its desired outcomes.

4. Budget Impacts

The budget for fiscal year 2009/2010 includes staff resources for this work program. The fiscal year 2010/2011 budget will need to include staff resources.

RECOMMENDED ACTION

Staff recommends that the Metro Council accept the 20 and 50 year Regional population and employment forecasts and the capacity analysis in the Urban Growth Report 2009-2030, with the revisions recommended in this Staff Report.

ATTACHMENT 1

DRAFT URBAN GROWTH REPORT COMMENT INDEX Fall 2009

<i>FROM</i>	<i>AFFILIATION</i>	<i>DATE</i>
Alford, Heidi		October 14, 2009
Anderson, Michael	Oregon Opportunity Network	October 14, 2009
Arcana, Judith		September 18, 2009
Battan, Jim		September 16, 2009
Becker, Michael		September 18, 2009
Bender, Rodney		September 18, 2009
Bidwell, Michael Patrick		September 18, 2009
Bookin, Beverly	Commercial Real Estate Economic Coalition	September 24, 2009
Boone, James L.		September 20, 2009
Brewster, Ginny		September 17, 2009
Brewster, Ginny		September 17, 2009
Brown, David		September 18, 2009
Brown, R.		September 18, 2009
Burke, Elizabeth		September 18, 2009
Carley, Ron and Fuglister, Jill	Coalition for a Livable Future	October 15, 2009
Carillo, Ken		September 18, 2009
Cavanaugh, Kevin		September 16, 2009
Cohen, Gerald J.	AARP – Oregon State Office	October 15, 2009
Conable, Barbara		September 18, 2009
Cox, Bill		September 18, 2009
Cusack, Tom		
Cushwa, Nancy		September 18, 2009
Davis, Tim		September 17, 2009
Deagle, Susie		September 18, 2009
Dibblee, Martha		September 15, 2009
Digman, Joe		September 18, 2009
Dorner, Catherine		September 18, 2009
Durtschi, Kay	Citizen Member – Metro Technical Advisory Committee	October 15, 2009
Effman, Jason		September 18, 2009
Elteto, Louis		September 18, 2009
Fain, Lisa		September 18, 2009
Fitzgerald, Marianne	Southwest Neighborhoods, Inc.	October 15, 2009
Franchesi, Cheryl and Terry		October 15, 2009
Frank, Lona Nelsen	ALPACAS of Tualatin Valley LLC	September 16, 2009
Gadea, Francisco		September 18, 2009
Gerth, John		September 18, 2009
Goldfarb, Gabriela		October 8, 2009
Goldsmith, Dell		October 10, 2009
Green, Karla		September 18, 2009
Gregory, Michele	Multnomah County Planning Commissioner	September 16, 2009
Hagen Jr., Jon Edwin		September 18, 2009
Hammon, Virginia		October 8, 2009
Hanrahan, Steve		September 18, 2009
Harvey, Linda A.		September 18, 2009
Hauk, Marna		September 18, 2009
Helm, Polly		October 15, 2009
Heyne, Klaus		September 18, 2009

City of Hillsboro (Alwin Turiel)	City of Hillsboro	October 8, 2009
Hoem, Shirley		September 15, 2009
Houck, Mike	Urban Greenspaces Institute	October 10, 2009
Hunter, Christopher		September 18, 2009
Jackson, Kelly M.		September 18, 2009
Jacobson, Pat and Jake		September 18, 2009
Johnson, Chuck		September 18, 2009
Johnson, Ellen	Housing Land Advocates	October 15, 2009
Johnson, Michael		September 18, 2009
Jones, D.		September 18, 2009
Kaplan, Seth		September 18, 2009
Karlock, Jim		October 15, 2009
Kemper, Heather	Legal Aid Services of Oregon	October 15, 2009
Kraft, Tom		September 15, 2009
Kulley, Marlowe		September 17, 2009
City of Lake Oswego (Mayor Jack Hoffman)	City of Lake Oswego	October 13, 2009
LeFeber, Bob	Commercial Realty Advisors	October 14, 2009
Lanker, Stefan		September 18, 2009
Larco, Dorothy		September 18, 2009
Laws, Kathleen		September 18, 2009
Leinova, Avery S.		September 18, 2009
Lindsey, Carolyn		September 18, 2009
Lord, Pamela J.		September 18, 2009
Malmquist, Bret		September 18, 2009
Meehan, Hilary		September 18, 2009
Merchant, Bonnie		September 18, 2009
Micheletti, Dustin		September 18, 2009
McClanahan, Gary		September 18, 2009
McClay, Mauria		September 18, 2009
McCracken, Rhiannon		September 18, 2009
McDonough, Sandra	Portland Business Alliance	October 15, 2009
McGrath, Teresa		September 20, 2009
McKinney, Trenton		September 18, 2009
Neer, Steven		September 18, 2009
Nielsen, Charles E.		October 10, 2009
Nielsen, David	Home Builders Association of Metropolitan Portland	October 13, 2009
Newman II, Will		September 17, 2009
Newman II, Will		October 15, 2009
Parker, Terry		October 15, 2009
Parks, Lindsay		October 8, 2009
Pearmine, Katie		September 18, 2009
Peterson, Kathryn		September 18, 2009
Platt, Thomas		September 18, 2009
Platt, Thomas		September 18, 2009
Port of Portland (Bill Wyatt)	Port of Portland	October 15, 2009
City of Portland (Mayor Sam Adams)	City of Portland	October 15, 2009
Pratt, Elizabeth	The League of Women Voters of Portland	October 15, 2009
Price, William R.		September 18, 2009
Qamar, Lawrence		October 15, 2009
Reid, Bill	Johnson Reid LLC	September 29, 2009
Roberts, Jeff		September 21, 2009

Rojas, Carlos		September 16, 2009
Rollow, Nina		September 18, 2009
Ross, Kelly	Western Advocates	October 15, 2009
Schlueter, Jonathan	Westside Economic Alliance	October 15, 2009
Seamons, Joe		September 18, 2009
Smith, Jefferson		October 15, 2009
Spady, Sha		September 21, 2009
Stec, Bradley		September 18, 2009
Stephens, Charlie		
Stout, Mel		September 15, 2009
Streicker, Gail		September 18, 2009
Swaren, Ron		October 15, 2009
Sweeney, J. J.		September 18, 2009
Thompson, James		September 18, 2009
Thrower, Ashley		September 18, 2009
Toll, Peter		September 16, 2009
City of Tualatin (Mayor Lou Ogden)	City of Tualatin	October 14, 2009
Waksman, Steve and Deborah		September 18, 2009
Wallauer, Martha and Robert		September 17, 2009
Washington County (Greg Miller)	Washington County	October 15, 2009
Waterston, Debra		September 18, 2009
Wilkerson, Carol Metzger		September 18, 2009
City of Wilsonville (Stephan Lashbrook)	City of Wilsonville	October 15, 2009
Wixson, Gene		September 18, 2009
Woodruff, Claire		September 18, 2009
Woods, Deanna G.		September 18, 2009
Young, Laura		October 12, 2009
Cities of Banks, Cornelius, Forest Grove, Hillsboro and North Plains (Mayors Kinsky, Bash, Kidd, Willey and Hatcher)	Multiple Cities	October 9, 2009

Employment UGR—technical comments		
Comment attribution	Comment summary	Metro staff response
City of Cornelius City of Forest Grove City of North Plains City of Hillsboro City of Banks Johnson-Reid	Metro’s cluster forecast is incorrect because it does not include NAICS code 334, which is the code under which solar panel manufacturing would fall.	All NAICS codes, including 334, are included in the Metro forecast. NAICS code 334 is also included in the cluster forecast. The UGR’s narrative erroneously states that SolarWorld is in NAICS code 2211, but this text error has no effect on the forecast or the assessment of land need. See Appendix 3 to the UGR for a list of the NAICS codes that are included in each cluster. See Appendix 12 to the UGR for the complete forecast, which includes all sectors.
City of Cornelius City of Forest Grove City of North Plains City of Hillsboro City of Banks Johnson-Reid	The UGR should forecast future land needs for specific industry clusters, including high tech, solar manufacturing, and bio-pharma.	Statewide Planning Goal 14 (Urbanization) requires that Metro ensure capacity for housing and employment. It does not require Metro to supply land with the specific characteristics that may be desired by individual industries or industry clusters. Long-term predictions about the site needs of specific (and emerging) industries are likely to be incorrect. When making specific decisions to expand the UGB, the needs of industry clusters may be considered.
City of Cornelius, City of Forest Grove, City of North Plains, City of Hillsboro, City of Banks, Johnson-Reid, Port of Portland, Portland Business Alliance, Commercial Association of Realtors	The UGR does not adequately incorporate the analysis found in the Hillsboro Draft Economic Opportunities Analysis.	Statewide Planning Goal 9 (Economic Development) requires cities and counties to provide for the specific types of employment needs and opportunities they identify in their Economic Opportunity Analyses (EOA). Goal 9 does not, however, apply to Metro. Oregon Administrative Rule 660-024-0040(5) states that “except for a metropolitan service district [Metro]... the determination of 20-year employment land need for an urban area must comply with applicable requirements of Goal 9...” EOAs often identify specific employment sectors that are the focus of a city’s economic development strategy. In EOAs, those priority clusters are sometimes assumed to see additional growth beyond what is indicated in a trend forecast. The UGR, on the other hand, provides an assessment of all employment sectors without identifying priority sectors. Though it may be beneficial to have a regional economic development strategy, Metro has not been charged with the task of developing that strategy and does not presume to have that role. Metro does, however, have a role in coordinating the population and employment forecasts for the region. Adding up the results of individual city forecasts would likely overstate regional growth in some sectors and understate it in others. Metro has some methodological concerns with the Hillsboro Draft Economic Opportunity Analysis (EOA). Primary concerns include: 1) The Hillsboro EOA’s forecast treats Metro’s older, pre-recession, medium forecast as a low (baseline) forecast. The Hillsboro EOA forecast explicitly rejects

Employment UGR—technical comments		
Comment attribution	Comment summary	Metro staff response
		<p>the long-term impacts of the current recession on manufacturing sectors.</p> <p>2) The Hillsboro forecast for NAICS code 334 (computer and electronic product manufacturing), and photovoltaic panel manufacturing, in particular, is so optimistic that it overwhelms the entire seven-county forecast for this sector. Population growth rates as well as the growth rates for other employment sectors have to have some logical consistency and also fit within the context of a national forecast. If the Hillsboro forecast for this sector were correct, it would have serious implications for overall regional growth as well. Factoring in the multiplier impact of the Hillsboro photovoltaic forecast would essentially explode the forecast for manufacturing, which in turn would stimulate growth in nonmanufacturing sectors such as services, retail, finance and other industries. Assuming the multipliers play out as usual, the employment forecast would likely increase from 1.5 percent annual growth (the current Metro forecast) and exceed two percent annual growth. Already, the Metro regional forecast is projected to grow faster than the U.S. average by 75 percent. At above two percent, our region's projected growth would exceed twice the normal rate. In addition, population growth would have to follow suit. Over a 20 year period, greater than two percent population and total employment growth is not realistic or sustainable. It is unlikely that a mature region like Portland metro can grow so much faster over the long-term than the regional, state and national trends depicted by other forecasters.</p> <p>The Hillsboro forecast for photovoltaic panel manufacturing employment is based on the Oregon Department of Energy goal for megawatts of electricity generated from solar panels. This methodology is predicated on the assumption that a significant share of the world's solar panels will be manufactured in Hillsboro. Solar panel manufacturing has entered a phase of standardization and overseas production, where companies will be competing based on low prices and low wages. Ramped up solar panel production in China and a softening of demand in Europe have resulted in a 50 percent drop in solar panel prices over the last year. This same trend has occurred in many other manufacturing sectors and is not expected to reverse itself.</p> <p>The greater degree of specificity found in the Hillsboro forecast, with its effort to make predictions about particular technologies (e.g. solar panels) makes it more</p>

Employment UGR—technical comments		
Comment attribution	Comment summary	Metro staff response
		<p>likely to be incorrect. When planning for the longer term, policy decisions will be much better served by forecasts that portray generalized aggregates that are tied to national data that have been exposed to continuous scrutiny.</p> <p>The Hillsboro EOA does not provide documentation of the methodologies used to forecast additional growth in the bio-tech and high tech clusters.</p>
City of Cornelius City of Forest Grove City of North Plains City of Hillsboro City of Banks Johnson-Reid	Metro's forecast understates growth in solar manufacturing, bio-pharma, and high tech manufacturing, sectors in which our region has historic strengths.	<p>The Metro forecast is based on data from IHS Global Insight, an internationally respected economic forecasting firm whose data is used by numerous public and private institutions. That data is subsequently adjusted to reflect our region's historic trends and economic strengths. Metro's forecast, in fact, indicates that the region will have a faster rate of growth in manufacturing and, more specifically, electronics manufacturing than the United States as a whole. But, as with the rest of the U.S., it is anticipated that manufacturing will represent a smaller share of total employment in the future. The recent recession is anticipated to have long-lasting effects, particularly on industrial sectors.</p> <p>Metro's forecast model has been peer-reviewed as has the recent Metro forecast (which includes the employment forecast). The peer review panel expressed confidence in the forecast's methodologies and results.</p>
Westside Economic Alliance	Metro's forecast calls for a substantial decrease in manufacturing employment. "The Westside Economic Alliance rejects the premises used to explain these forecasts and challenges Metro to reconsider the implications of this vision."	The Metro seven-county forecast indicates growth in manufacturing employment at both the high and low ends of the forecast range. The forecast indicates that manufacturing will represent a smaller <u>share</u> of future employment. The Metro forecast also indicates that at the high end of the employment range forecast, manufacturing may bounce back faster than the rest of the economy.
Westside Economic Alliance	Metro's forecast is incorrect because it assumes that phenomena such as global warming, rising fuel prices, and a degraded environment will stifle population growth in the seven-county region.	Metro's seven-county forecast makes no assumptions about possible catastrophic events. Forecasted population growth rates are the product of large-scale demographic trends. The UGR suggests that rising fuel prices and climate change are compelling reasons to consider growth management policies carefully. The use of a range forecast allows for that policy discussion.
Urban Greenspaces Institute	If Climate Change increases the number of floods and wildland fires, temperatures elsewhere in the U. S., especially in the arid regions of the Southwest, is it possible Climate Change "refugees" might increase population projects even more than your current	Metro staff agrees that there is evidence to suggest that climate change may cause inter-regional migrations, but it is not clear what the degree and direction of these migrations may be. Consequently, Metro's seven-county forecast makes no assumptions about possible catastrophic events. The UGR suggests that rising fuel prices and climate change are compelling reasons to consider growth

Employment UGR—technical comments		
Comment attribution	Comment summary	Metro staff response
	modeling suggests?	management policies carefully. The use of a range forecast allows for that policy discussion.
Westside Economic Alliance	The seven-county forecast is wrong because growth rates are lower than at any time since Oregon was granted statehood.	Growth <u>rates</u> are forecasted to decline, but this is because of the mathematics of having an ever larger base (existing) population. When expressed in absolute numbers, the forecast is consistent with previous forecasts, which have proven accurate (see Table 1, attached to the end of this document, for a comparison of an older Metro forecast with actual growth).
City of Cornelius City of Forest Grove City of North Plains City of Hillsboro City of Banks Johnson-Reid	The presence of an existing solar manufacturing cluster in Hillsboro will result in western Washington County capturing the bulk of future high tech and solar manufacturing jobs.	Solar manufacturing firms can be found throughout Oregon, the United States, and the world. Please see Table 2, attached to the end of this document, for a summary of Oregon's recent solar recruits' location choices. Two out of the nine recruits are in Hillsboro (one of those two, SpectraWatt, has since relocated to New York because of public subsidies), while the remaining firms are dispersed throughout the state.
Port of Portland	A job forecast is inadequate for assessing land needs associated with commodity flows (freight, logistics).	<p>This is a comment that Metro received on the preliminary UGR as well. Metro would welcome specific suggestions on how to perform this portion of the assessment differently, but has not received any to date.</p> <p>Staff proposes that the final UGR should reflect the Metro Policy Advisory Committee's recommendation to revise the identified demand for large lot capacity from 200-800 acres to 200-1,500 acres. This revision would acknowledge the potential shortcomings of using an employment forecast as the sole basis for assessing large lot demand.</p> <p>The UGR's analysis considers land extensive uses with fewer employees. The overall demand model assumptions on employees per square foot by building type have also been revised based on the feedback received on the preliminary analysis. These adjustments should address some concerns about land demand for freight uses.</p>
Port of Portland	Freight facility expansion would likely consume other industrial land, which, in turn, would trigger demand for additional industrial land elsewhere in the region.	Freight-related jobs are included in the regional forecast and demand for capacity that is generated by these jobs is included in the UGR's assessment. Suggestions that a job forecast is not an adequate means of estimating land demand for freight uses have not been accompanied by specific suggestions for an alternative methodology.

Employment UGR—technical comments		
Comment attribution	Comment summary	Metro staff response
		Staff proposes that the final UGR should reflect the Metro Policy Advisory Committee's recommendation to revise the identified demand for large lot capacity from 200-800 acres to 200-1,500 acres. This revision would acknowledge the potential shortcomings of using an employment forecast as the sole basis for assessing large lot demand.
Port of Portland	Modify the region's assumed job capture rate to make it more aggressive.	The capture rates (industrial and non-industrial) used by Metro in the UGR are an output of scenario modeling. The policy and investment inputs into that modeling are intended to represent a continuation of current policies and investment trends. If the region is to achieve a higher job capture rate, it would likely need to implement new policies and investments. Expressing a different point of view, we have received comments from Clark County and Vancouver that the assumed capture rate is too high.
City of Cornelius City of Forest Grove City of North Plains City of Hillsboro City of Banks Johnson-Reid	Large, vacant lots are needed in order to attract solar manufacturers to the Portland metropolitan region.	<p>The location choices of several of Oregon's recent solar manufacturing recruits indicate that large, vacant lots are not needed by most firms. Please see Table 2, attached to the end of this document, for a summary of Oregon's recent solar recruits' location choices. Of the nine recent recruits listed, seven are on properties smaller than 25 acres (three of those are on less than 10 acres). Two-thirds of these recent recruits, including SolarWorld, North America's largest solar manufacturer, have located in existing buildings.</p> <p>One firm, SpectraWatt, has left Oregon for New York despite having a vacant 20 acre site (cited reason is because the public subsidies offered were more enticing).</p> <p>Staff proposes that the final UGR should reflect the Metro Policy Advisory Committee's recommendation to revise the identified demand for large lot capacity from 200-800 acres to 200-1,500 acres. This revision would acknowledge the potential shortcomings of using an employment forecast as the sole basis for assessing large lot demand. The Metro staff recommendation is that the region should find ways to use our existing inventory of land more efficiently.</p>
Port of Portland, Commercial Real Estate Economic Coalition	Land must be in the right amount and in the right location for the needed purpose.	Statewide Planning Goal 14 (Urbanization) requires that Metro ensure capacity for housing and employment. It does not require Metro to supply land with the specific characteristics that may be desired by individual industries or industry clusters.

Employment UGR—technical comments		
Comment attribution	Comment summary	Metro staff response
		The purpose of the UGR is to identify any gap in capacity, not to assess how and where to address the gap. Local and regional investments can support efficient utilization of land inside the UGB.
Port of Portland	Much of the region’s inventory of industrial land is not ready for development due to substantial constraints including brownfield status, location or lack of infrastructure, and regulatory overlays.	These constraints are taken into account in the UGR. Brownfield sites are assumed to only be available for development in the longer term. Only half of the capacity in recent UGB expansion areas is assumed to be available in the 20-year time frame because of infrastructure shortcomings. Portions of tax lots with environmental constraints are not included in the buildable land inventory. See Tables 27 and 28 on pages 72 and 73 of the UGR for additional information.
Commercial Association of Realtors	The UGR should not assume that public financing will be in place for unknown targeted public investments.	The UGR only assumes those policies and investment trends that currently exist.
Port of Portland	The buildable land inventory does not account for upland habitat protections that reduce capacity for development.	Title 13 (Nature in Neighborhoods) upland habitat protections only apply to future UGB expansion areas. The UGR assesses the current UGB’s capacity.
Urban Greenspaces Institute	How many acres of the region’s supply of buildable land for employment are urban forest canopy, headwaters areas, and other natural resource lands?	The UGR’s buildable land inventory takes into account <u>existing</u> environmental regulations, discounting the inventory where appropriate.
Port of Portland	The lack of development in new urban areas (areas brought into the UGB since 1997) is not necessarily because of a lack of infrastructure or governance, but because the land is not suitable for industrial development.	Past UGB expansions have been made in the types of locations that are dictated by current State law. Over time, these areas are intended to develop into complete communities, including employment opportunities. It is hoped that the designation of urban reserves will identify sites that are well-suited for development. Metro staff believes that infrastructure and governance must be addressed to make any future UGB expansion areas developable.
City of Tualatin, Commercial Association of Realtors	The UGR should not assume that industrial uses will locate in multi-story buildings.	The UGR’s analysis does not assume that industrial uses will locate in multi-story buildings.
Commercial Association of Realtors	The UGR should not assume “ever-increasing” floor-area ratios for all building types with no regard for market feasibility.	Metro staff concurs and asserts that the UGR’s assumptions regarding floor-area ratios (FAR) are conservative. No change in FAR is assumed in the short-term and very modest increases (10%) are assumed in the long-term. Assumptions about increases in FARs for industrial uses are particularly modest. The FARs that are assumed in the UGR account for the thresholds at which structured parking becomes necessary.
Commercial Association	The refill rates assumed in the UGR do not seem	The refill rates assumed in the UGR are the product of modeling that is informed

Employment UGR—technical comments		
Comment attribution	Comment summary	Metro staff response
of Realtors	reasonable.	by historic data and professional expertise.

Employment UGR—policy comments		
Comment attribution	Comment summary	Metro staff response
City of Cornelius, City of Forest Grove, City of North Plains, City of Hillsboro, City of Banks, Johnson-Reid, Port of Portland, Portland Business Alliance, Commercial Real Estate Economic Coalition	Undersupplying land for priority industry clusters would be harmful to the economy.	<p>Metro performs the UGR analysis every five years to ensure a 20-year supply of capacity for jobs. The effect of this is that, in the short-term (five years), there will be four times the needed capacity for jobs. It is extremely unlikely that amount will be insufficient to accommodate growth before the next UGR analysis in five years. This five-year cycle creates a built-in cushion to allow for choices among sites. Experience has shown that the majority of recent solar manufacturing recruits have located in existing buildings and on smaller sites.</p> <p>The final UGR will reflect the Metro Policy Advisory Committee's recommendation to revise the identified demand for large lot capacity from 200-800 acres to 200-1,500 acres. This revision acknowledges potential shortcomings of using an employment forecast as the sole basis for assessing large lot demand.</p>
Port of Portland	Regional choices related to land supply and transportation will determine the economic future of the region.	Many factors at the global, national, state, regional and local levels have effects on the region's economy. The UGR is not intended to serve as an economic development strategy; it informs land supply decisions that will be made in 2010.
Port of Portland	One of the "six desired outcomes" is economic competitiveness and prosperity—why is there no strategy presented to achieve this outcome or an assessment of how other desired outcomes may conflict with this outcome?	The purpose of the UGR is to identify whether a capacity gap exists and, if so, to what degree. This UGR intentionally presented a variety of policy options to consider for addressing land demand and achieving the region's desired outcomes, but it is not the purpose of the UGR to determine the specifics of those policy options. The viability of those policy options does not have an impact on the capacity analysis. Those policy options can be more thoroughly considered in 2010.
Port of Portland	The UGR and transportation investment strategy need to link up with industry cluster needs. Use the Portland Regional Partners for Business list of clusters instead of the Portland Development Commission's (PDC) list.	<p>Though it may be beneficial to have a regional economic development strategy, Metro has not been charged with the task of developing that strategy and does not presume to have that role.</p> <p>Because there is no agreed upon regional economic development strategy, there is no "right" cluster list to use. The Draft UGR used the PDC list as a way of presenting information in a format that addresses the economic development priorities of many cities in the region. The full forecast, which includes all employment sectors, is the basis for the capacity assessment. The cluster forecast does not figure into the capacity assessment. New cluster definitions will not change the capacity assessment.</p>
City of Portland	The vast majority of our jobs are created through the growth of small businesses. We need to nurture and	Metro's analysis indicates that most employment will occur in smaller firms. Attracting larger firms is also of importance to the region's economy.

Employment UGR—policy comments		
Comment attribution	Comment summary	Metro staff response
	retain those companies while attracting others.	
Port of Portland	Two key elements of the strategy for providing large lot supply (brownfield cleanup and fast process for UGB expansions) will be undefined at the close of public comment on October 15.	The purpose of the UGR is to identify whether a capacity gap exists and, if so, to what degree. This UGR intentionally presented a variety of policy options to consider for addressing land demand, but it is not the purpose of the UGR to determine the specifics of those policy options. The viability of those policy options does not have an impact on the capacity analysis. Those policy options can be more thoroughly considered in late 2009 and in 2010.
Port of Portland, Commercial Real Estate Economic Coalition	Brownfield cleanup should be a priority	Metro concurs that brownfield cleanup should be a regional priority and welcomes partnerships to institute more brownfield cleanup programs. A MPAC subcommittee will be looking at brownfield cleanup as one option to make more of the region's existing industrial capacity available.
City of Portland	The City of Portland is committed to cleaning up, over time, the City's brownfield sites.	The City has a strong brownfields cleanup program and Metro efforts, focused elsewhere in the region, serve as a complement. Metro staff is open to new opportunities to partner with the City of Portland in brownfield cleanup.
City of Portland	The City of Portland is committed to consolidating and assembling adjoining parcels to provide larger sites. Opening up huge tracts of otherwise excellent agricultural land for industry, when we have land with services already in the UGB, doesn't make sense from a regional investment point of view.	Metro staff is open to opportunities to partner with the City of Portland in employment land assembly.
Port of Portland	A regional infrastructure fund is needed to make industrial sites shovel ready.	Infrastructure funding shortfalls have made it difficult to develop the region's existing supply of land for industrial uses. Metro welcomes a discussion of developing a regional investment strategy, including discussions about possible funding sources.
Portland Business Alliance	There is no reason to expect that funding will be more readily available for refill development than for expansion and to assume otherwise overstates the region's ability to accommodate growth in the existing land supply.	The refill rates that are assumed in the UGR are based on a continuation of existing public investment trends.
Commercial Association of Realtors	The Association appreciates the UGR's improved analytical approach and sensitivity to market realities, but does not believe its estimates or projections. The UGR should make conservative, market-based assumptions.	Metro staff appreciates the input given by the Commercial Association of Realtors that informed some of the UGR's technical assumptions. Metro staff believes that its approach to this analysis is market reality-based.

Employment UGR—policy comments		
Comment attribution	Comment summary	Metro staff response
Commercial Association of Realtors	The UGR should not assume that the market will respond to our policies and investments.	As pointed out by the Commercial Association of Realtors, this UGR has an improved analytical approach that acknowledges market dynamics. The UGR's market assumptions are informed by modeling, historic evidence and the professional expertise of Metro staff, consultants, and private sector representatives.
Commercial Association of Realtors	The UGR should not assume political support for some set of future policy actions	The UGR only assumes those policies and investment trends that currently exist.
Port of Portland Portland Business Alliance	The "fast track" UGB expansion process that has been proposed by some will not be fast enough once planning, annexation, zoning, and infrastructure construction are considered.	An MPAC subcommittee will take up the issue of how to ensure that large lots are available and protected for industrial uses. The fast-track process is one proposal. Metro welcome other proposals.
Johnson-Reid	The draft UGR does not consider lands north of the existing Washington County UGB as candidate expansion areas for employment growth, modeling, and employment land capacity study.	<p>The UGR's purpose is to identify any gap in the capacity of the current urban growth boundary (UGB) to accommodate growth. The UGR is not intended to examine how or where to fill a capacity gap outside of the current UGB.</p> <p>Scenario modeling was used to inform the UGR. Those scenarios assume a continuation of current policies and investment trends and, as such, assume that future UGB expansions will follow the existing hierarchy of lands as defined by State law. When urban and rural reserve designations are made, scenario assumptions about future UGB expansions will be adjusted.</p>
Port of Portland	Habitat protection programs at the regional and local levels reduce the efficiency with which land is used inside the UGB.	Habitat protection and provision of parks and open spaces are key components of the 2040 Growth Concept. Balancing these goals with efficient development of land is often challenging and Metro is always looking for new ways of doing so.
Port of Portland	The UGR implies that there has been a problem of industrial land conversion and that there is a need to revise Title 4 of the Urban Growth Management Functional Plan. Title 4 provides adequate protection. If there are conversions from industrial uses, it is an enforcement issue.	Metro staff hopes to compile more information to determine whether industrial land conversion has been occurring and, if so, why. An MPAC subcommittee will take up the issue of how to ensure that large lots are available and protected for industrial uses.
Commercial Association of Realtors, Citizen comments (less than five)	Expand the UGB	The decision about whether or not to expand the UGB will be made by the Metro Council, in consultation with MPAC, in 2010. That decision will be based on the UGR's analysis and any new policies or public investments that are adopted by the end of 2010 that affect the region's capacity.
Citizen comments	Focus growth inside the existing UGB	The decision about whether or not to expand the UGB will be made by the Metro

Employment UGR—policy comments		
Comment attribution	Comment summary	Metro staff response
(approximately 100)		Council, in consultation with MPAC, in 2010. That decision will be based on the UGR's analysis and any new policies or public investments that are adopted by the end of 2010 that affect the region's capacity.
Port of Portland, Portland Business Alliance, Commercial Association of Realtors	30 days is not an adequate amount of time for public review and comment on the UGR	<p>Metro must meet a State-mandated deadline (end of 2009) for the Metro Council's acceptance of the UGR. The public will be able to comment throughout most of 2010 on the various policy choices that will be considered for closing any capacity gap identified in the UGR.</p> <p>Metro staff appreciates the time commitment that various advisory committees have made in providing review of the UGR. Metro has been working with advisory committees to refine the approach and contents of the UGR since winter of 2008. A preliminary UGR was released in May 2009 in order to proactively solicit and respond to technical comments. To the extent possible, comments received on the preliminary UGR have been addressed in the draft UGR. Please see Appendix 1 to the Draft UGR for a summary of comments received and draft Metro staff responses.</p>

Residential UGR—technical comments		
Comment attribution	Comment summary	Metro staff response
City of Portland	Future trends such as higher energy costs, carbon taxes or regulations, and changing demographics make Portland well-positioned to provide future residents with the kinds of housing choices that they will desire. Portland has the ability to accommodate 140,000 more households without any changes to zoning.	The UGR's analysis indicates that the City of Portland and the region have ample zoned capacity to accommodate the next 20 years of residential growth. The UGR shows a need to attract the residential market to that zoned capacity. Policies and investments that encourage redevelopment and infill in centers and corridors should remain the region's focus. The trends cited by the City may attract more of the forecasted households to existing urban areas than contemplated by the UGR.
Home Builders Association of Metropolitan Portland	How does Metro plan on achieving refill rates of 50 percent?	The draft UGR assumes a 33 percent refill rate, which is in keeping with historic rates and, according to Metro's market-based economic model, is likely to be achieved under current zoning.
City of Tualatin Portland Business Alliance	A 33 percent refill rate may not be a reasonable expectation.	The draft UGR assumes a 33 percent refill rate, which is in keeping with historic rates and, according to Metro's market-based economic model, is likely to be achieved under current zoning.
City of Tualatin	Where is the analysis that indicates where refill will be occurring?	Refill rates are expected to vary from city to city, with generally higher rates in Portland than in outlying communities. Please see Maps 1-4, attached to the end of this summary, which show historic and forecasted refill rates throughout the region for single-family and multi-family residential development.
Home Builders Association of Metropolitan Portland	Lands that are likely spots ("low-hanging fruit") for refill have already seen refill occur.	Redevelopment and infill (redevelopment in particular) are ongoing market phenomena. There are many underutilized sites throughout the region that remain ripe for redevelopment and new opportunities will continue to emerge over time.
Home Builders Association of Metropolitan Portland	How does Metro anticipate having 71,000 housing units subsidized to the tune of up to \$50,000 per home and what will the impact be on schools and other public services if urban renewal districts are used to created these subsidies and pull money away from other public services?	<p>The Home Builders Association is referring to scenario assumptions in its comment. For the purpose of scenario modeling, Metro assumed a continuation of existing investment trends. The residential incentive assumptions that Metro made were reviewed by cities, counties, the Portland Development Commission, and the Metro Technical Advisory Committee. There are no assumptions made about new levels of investment. Better performance may be achieved with additional investments, investments in different locations, or simply with additional time.</p> <p>It is not the role of the UGR to determine the possible impact on schools and other public services if cities continue their urban renewal programs.</p>
Home Builders Association of Metropolitan Portland,	The assumption about future park needs that is made in the UGR capacity calculation is incorrect. Cities and park providers have more financial resources today than they	There is no specific guidance in state planning law, from ORS 197.296 or Goal 8 on Recreational Needs, on methods to determine park needs. There is no perfect way of estimating future park needs since there is no regional level of service standard

Residential UGR—technical comments		
Comment attribution	Comment summary	Metro staff response
Western Advocates, Inc.	did in 2002 (year of previous UGR) to purchase park land.	<p>for parks.</p> <p>To maintain an approach that is consistent with the approach used in 2002, staff proposes keeping the implicit parks level of service found in the 2002 UGR:</p> <p><u>In 2002 UGR:</u> Forecasted 220,700 dwelling unit growth in 20 year period System-development-charge-based park deduction = 1,100 acres Implied level of service = 1,100 park acres for 220,700 new dwelling units</p> <p><u>Assuming same implied level of service as in 2002, then in 2009 UGR:</u> Forecasted 262,400 dwelling unit growth in 20 years (baseline assumption) 1,100 / 220,700 * 262,400 = 1,300 acres of new park deduction</p> <p>The acres of parks and open space cited in the Regional Infrastructure Analysis include natural areas and other non-active use spaces. The UGR's parks calculation is only intended to estimate the land demand for active-use parks (i.e. not natural areas) since these are lands that could otherwise be buildable for residential purposes. The buildable land inventory takes into account vacant lands that are not buildable because of regulatory protections (Titles 3 and 13 of the Urban Growth Management Functional Plan).</p>
Legal Aid Services of Oregon (Hillsboro Regional Office), Tom Cusack	Revise the table appearing on page 21 of Appendix 8 (needed housing data tables) to more accurately show the need for subsidies at higher rent levels than the less-than-\$400 rent level currently shown.	Metro staff appreciates the careful review of the data and agrees that additional rent and ownership price categories should be denoted as “partially assisted.” All categories of rental housing below \$1,100 in rent and owner-occupied housing that is \$200,000 or less in value may need government assistance. Corrections to tables 303.1a and 303.1b in Appendix 8 will be made in the final UGR.
Tom Cusack	Metro should review existing reports, Census data, and the American Community Survey data to determine the relative rate of Portland Metro housing mismatch by income and rent levels and adjust their demand/supply projections accordingly.	<p>The UGR's method and the method proposed by Mr. Cusack are both valid approaches, but are suitable for different purposes. The method proposed by Mr. Cusack would provide an assessment of current conditions, but would not depict the housing production that is likely to occur in the next 20 years as required for the UGR.</p> <p>To get a sense of the mismatch referenced by Mr. Cusack, the housing needs analysis scenarios forecast future housing production and the number of future cost-burdened households (renters paying more than 50 percent of their income</p>

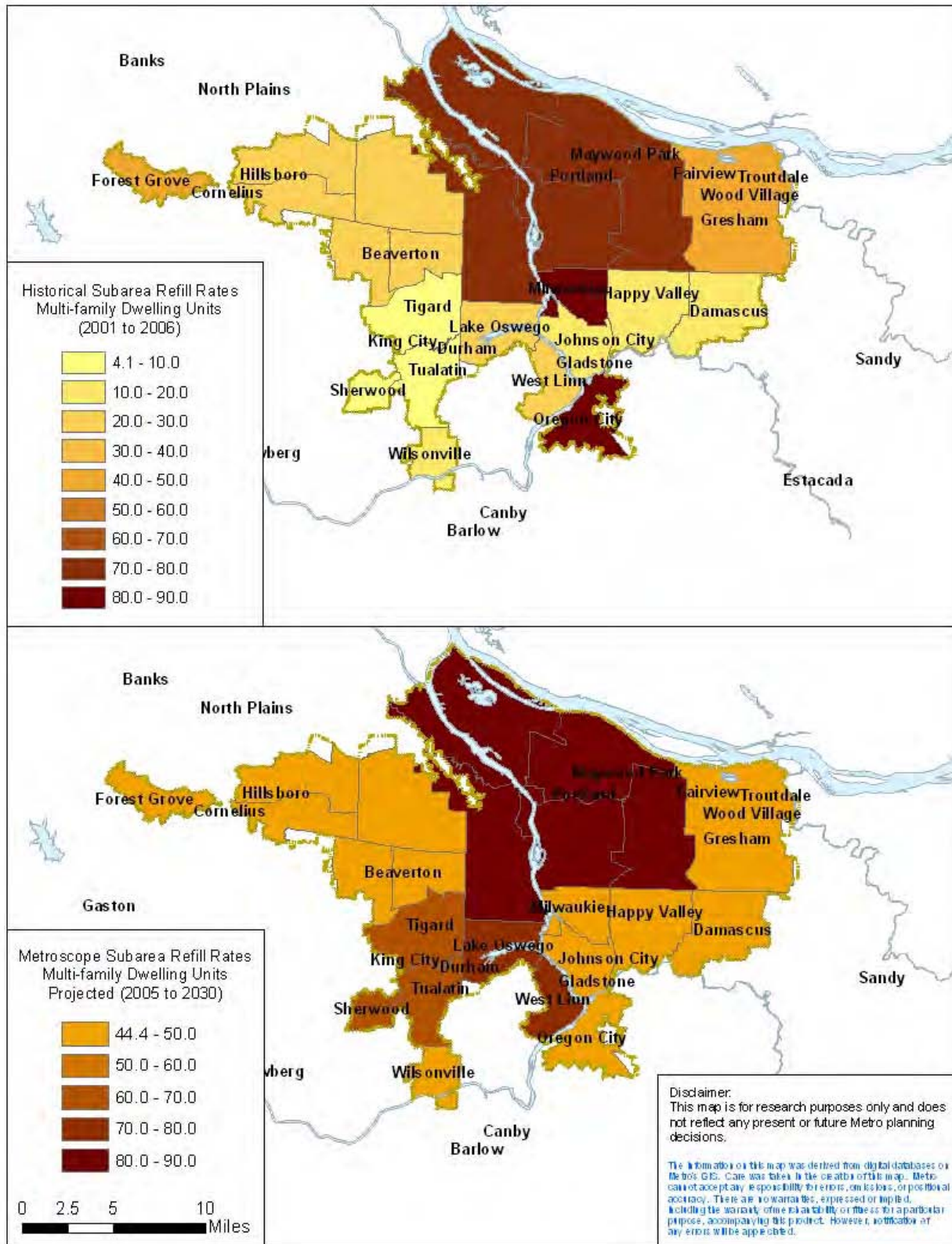
Residential UGR—technical comments		
Comment attribution	Comment summary	Metro staff response
		for housing and transportation). The UGR’s approach acknowledges the fact that higher income households cannot be prevented from occupying market rate housing that is cheaper than what they could potentially afford.
Legal Aide Services of Oregon (Hillsboro Regional Office)	The report fails to mention and account for the impact of units otherwise affordable to lower income households being occupied by higher income households.	<p>As pointed out in the comment, the analysis doesn’t indicate what a household <u>should</u> pay (given their income), just what they <u>do</u> pay. This approach acknowledges that, rather than being static, housing prices are a product of market demand. This analytical approach is true to the dynamic faced by low income households in today’s market. Without a housing quota system that sets aside housing for different income levels, this is also how future housing markets are expected to function.</p> <p>To assess affordability, the analysis provides information about the share of income spent on housing and transportation. For some households, this share is relatively small and for others it is substantial. It remains for policy discussion what can be done to improve these outcomes.</p>
Legal Aid Services of Oregon (Hillsboro Regional Office), Tom Cusack	Add a narrative discussion and table that shows the relevant need for government housing including housing that receives public assistance.	<p>Metro staff will add narrative to better describe affordable housing needs. The analysis indicates how many households (by rent or home price) <u>may need</u> government assistance. However, the question of how many households <u>should receive</u> government assistance is a policy matter that is open to interpretation. The UGR provides several analyses that can inform that discussion:</p> <p>Tables 303.1a and 303.1b, found in Appendix 8, provide the number of new, renter-occupied and owner-occupied dwelling units by rent or value range. In most rent ranges, there would appear to be a need for some amount of government assistance. This determination would also depend on wage levels.</p> <p>Tables 303.2a and 303.2b, found in Appendix 8, provide the number of renter-occupied dwelling units where the occupant is spending more than 50 percent of their income on transportation and housing. The UGR deems these households to be cost-burdened. The UGR further asserts that costs to these households may be reduced through a number of mechanisms including, but not limited to, subsidies. Other mechanisms include transit investments and changes to local zoning codes to allow a greater diversity of housing types and sizes.</p>

Residential UGR—technical comments		
Comment attribution	Comment summary	Metro staff response
Legal Aid Services of Oregon (Hillsboro Regional Office)	Households with children, not seniors, will represent the majority of low income renters.	In trying to make the report more readable, Appendix 7 blends owners and renters. As a consequence, the low income renters with children household type is perhaps not as visible in the report as it could be. Household type two for renters has the same low income as household type one but is younger and has a larger household with a much greater chance of children being present. This household type has a higher propensity to consume renter single family homes and to travel much further than renter household type one. As noted in the comment, they consume a larger house or apartment than do seniors. As a consequence their cost burden is substantially higher (15 – 30%) than household type one.

Residential UGR—policy comments		
Comment attribution	Comment summary	Metro staff response
City of Lake Oswego	The City supports the UGR's analysis and is committed to helping expand capacity in the Foothills area of Lake Oswego to create a dense, new transit-oriented neighborhood.	Metro looks forward to working with Lake Oswego and other cities to identify how to regional and local actions can be coordinated to achieve local aspirations that are supportive of the 2040 Growth Concept.
Home Builders Association of Metropolitan Portland	The public will not accept higher densities.	The UGR analysis does not assume any change to current zoning, so the UGR does not assume higher zoned densities in existing neighborhoods. The 2040 Growth Concept calls for focusing growth in centers and corridors as directed by the region's citizens.
City of Wilsonville Coalition for a Livable Future	Infill and redevelopment in centers and corridors are generally preferable and more efficient than outward expansion. Infill and redevelopment protect natural resources. There is no money for infrastructure in UGB expansion areas. Infill and redevelopment can help to fund the maintenance of existing infrastructure. Infill and redevelopment will be necessary to reduce carbon emissions.	Infill and redevelopment are key market responses that the 2040 Growth Concept calls for in centers and corridors.
League of Women Voters of Portland	Compact urban form and the integration of land use and transportation will be essential for addressing climate change and providing equity of opportunity. Areas around transit centers and light rail stations, such as Lents and Gateway offer great potential and deserve attention in the investment strategy.	Metro staff concurs.
Home Builders Association of Metropolitan Portland	Policies that push more households to live outside the Metro UGB do not mesh with Metro's goals for sustainability.	Metro staff concurs that there are negative implications of having more people choose to live in neighboring cities and commuting back to the Metro region. The draft UGR identifies a residential capacity gap. There are multiple ways to fill that gap that will be discussed in 2010.
Urban Greenspaces Institute	The urban forest canopy, headwaters areas, and upland habitat must receive heightened protection if the region is to pursue infill and redevelopment. Title 13 is insufficient protection.	In determining the region's capacity for growth, the UGR must only assume regulations that are currently in place.
League of Women Voters of Portland	The League supports the diversification of the region's housing stock, by type and price.	Metro staff concurs that additional housing options are needed in the region in order to reduce the number and share of households that are cost-burdened.
Oregon Opportunity Network,	Housing and transportation affordability must be considered in growth management and investment	Metro staff concurs and notes that the UGR analysis finds that many of the region's existing centers and corridors offer the most affordable housing and

Residential UGR—policy comments		
Comment attribution	Comment summary	Metro staff response
Housing Land Advocates, AARP, Legal Aid Services of Oregon (Hillsboro Regional Office)	decisions. Transit-Oriented Development should be promoted.	transportation options. Yet, an affordability problem is likely to persist and perhaps worsen with a continuation of current policies and investment trends. Growth management policies and transportation investments alone will not, however, solve the affordability problem.
Legal Aid Services of Oregon (Hillsboro Regional Office)	Set concrete, regional goals, objectives and performance measures for housing affordability. Go beyond voluntary measures as they have not resulted in local jurisdictions making affordable housing a priority.	Metro staff appreciates this input. These tasks do not, however, fall under the purview of the UGR.
Home Builders Association of Metropolitan Portland	30 days is not an adequate amount of time for public review and comment on the UGR	<p>The public will be able to comment throughout most of 2010 on the various policy choices that will be considered for closing any capacity gap identified in the UGR.</p> <p>Metro staff appreciates the time commitment that various advisory committees have made in providing review of the UGR. Metro has been working with advisory committees to refine the approach and contents of the UGR since winter of 2009. A preliminary UGR was released in May 2009 in order to proactively solicit and respond to technical comments. To the extent possible, comments received on the preliminary UGR have been addressed in the draft UGR. Please see Appendix 1 to the Draft UGR for a summary of comments received and draft Metro staff responses.</p> <p>Metro continues to try to give review and comment opportunities, but must meet a State-mandated deadline (end of 2009) for the Metro Council's acceptance of the UGR.</p>
Citizen comments (less than five)	Expand the UGB	The decision about whether or not to expand the UGB will be made by the Metro Council, in consultation with MPAC, in 2010. That decision will be based on the UGR's analysis and any new policies or public investments that are adopted by the end of 2010 that affect the region's capacity.
Citizen comments (approximately 100), Southwest Neighborhoods, Inc.	Focus growth inside the existing UGB	The decision about whether or not to expand the UGB will be made by the Metro Council, in consultation with MPAC, in 2010. That decision will be based on the UGR's analysis and any new policies or public investments that are adopted by the end of 2010 that affect the region's capacity.

**Maps 1 through 4:
Multi-family residential refill rates (historical and forecasted)**



Single-family residential refill rates (historic and forecasted)

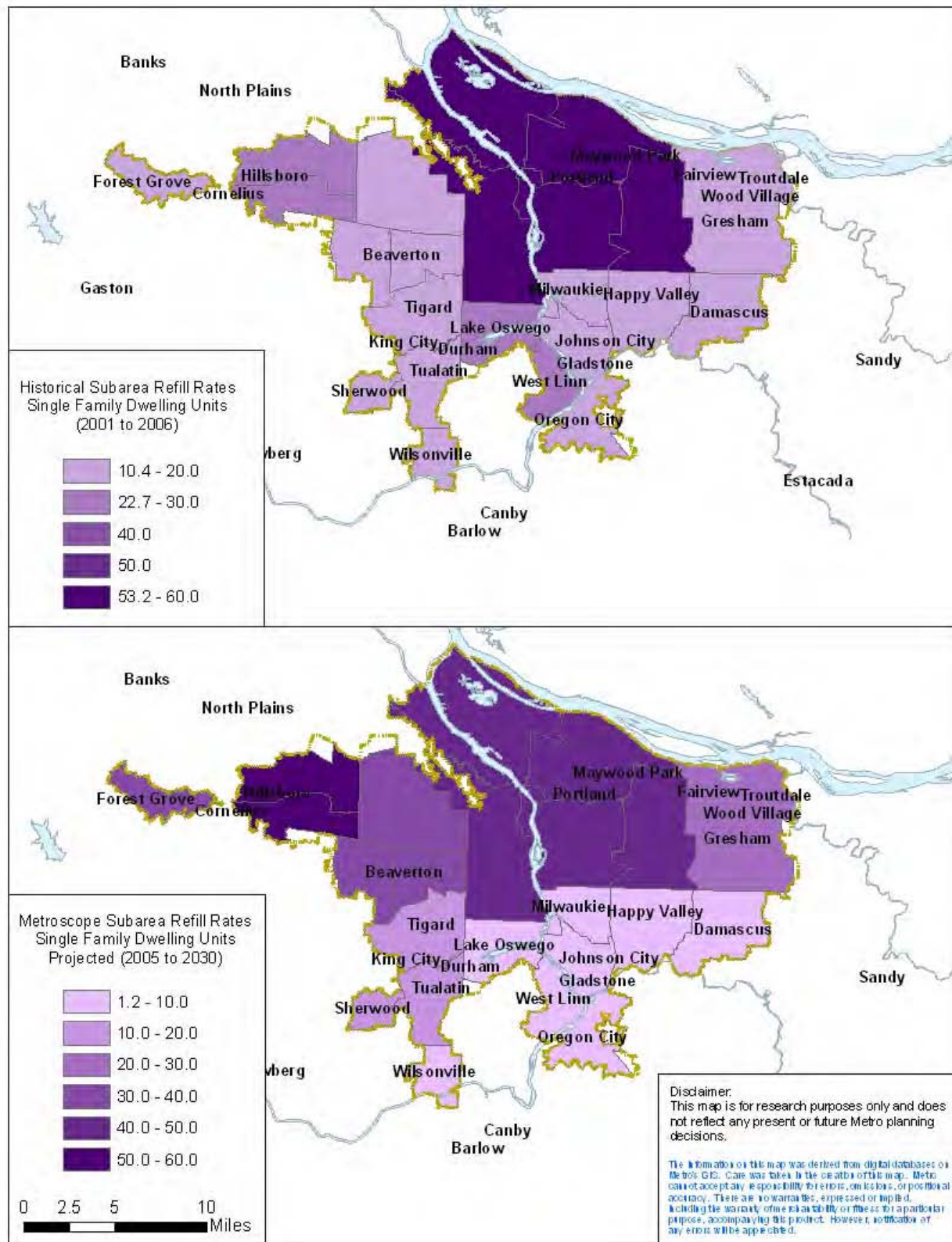


Table 1: Regional Forecast Comparison: History and 2000 UGR Forecast
Population - Portland Region (5 counties)

	Forecast	History	Difference	% Difference	commentary
2000	1,874,450	1,874,450	0	0.0%	forecast base year was 2000 Census
2001	1,902,500	1,922,984	-20,484	-1.1%	recession clouds pessimism in forecast outlook --> underforecast population growth
2002	1,934,340	1,958,976	-24,636	-1.3%	
2003	1,963,690	1,983,367	-19,677	-1.0%	jobless recovery dampens regional up turn
2004	2,007,710	2,003,354	4,356	0.2%	
2005	2,049,190	2,035,565	13,625	0.7%	
2006	2,090,960	2,075,034	15,926	0.8%	unforeseen recession taints trend forecast --> over forecast population growth as steep drop in housing prices and economy depresses in-migration flows
2007	2,132,750	2,115,394	17,356	0.8%	
2008	2,170,100	2,147,260	22,840	1.1%	
2009	2,203,000	2,158,115	44,885	2.1%	

Sources: Metro Regional Forecast: 2000-2030, Sept. 2002; U.S. Census Bureau; PSU; OFM

Employment - Portland Region (5 counties)

	Forecast	History	Difference	% Difference	commentary
2000	958,010	960,910	-2,900	-0.3%	forecast base year was 2000 BLS jobs
2001	954,750	953,750	1,000	0.1%	job growth stalls as recession hits the region
2002	951,300	932,260	19,040	2.0%	recession grips regional economy over a longer and deeper duration --> over forecast growth during this down-cycle
2003	976,480	922,520	53,960	5.8%	
2004	1,009,280	941,930	67,350	7.2%	"jobless" recovery begins adding to a jobs recovery as real estate & finance bubble spurs economic growth across the nation as growth inches towards pre-recession growth trend
2005	1,043,510	971,190	72,320	7.4%	
2006	1,068,030	1,002,487	65,543	6.5%	
2007	1,090,440	1,021,862	68,578	6.7%	recession hits again --> over forecast jobs as growth again cycles deeper below expected pre-recession employment trends
2008	1,120,200	1,022,319	97,881	9.6%	
2009	1,144,900	N.A.			

sources: Metro Regional Forecast: 2000-2030, Sept. 2000; U.S. Bureau of Labor Statistics and Oregon State Employment Division

5 counties = Multnomah, Clackamas, Washington, Yamhill and Clark

Table 2: Site choices of solar manufacturing firms in Oregon

Company	City	Acres	Using existing building?	Notes
PV Powered	Bend	9	Undetermined (appears yes)	Company founded in Bend. 100,000 square feet of building on former Oregon Woodworking site. Manufactures power inverters.
Solaicx	Portland	21	yes	
SolarWorld	Hillsboro	94	yes	Company in final stages of expansion at Hillsboro site. Moved into existing Komatsu silicon wafer facility.
Peak Sun Silicon	Millersburg	8	no	Company has option to purchase an additional 90 acres in Millersburg
XsunX	Wood Village	8.28	yes	Company first chose Oregon as a location and then began a site selection process, looking for existing buildings. The building that XsunX leases previously housed Merix, a high-tech manufacturer.
SpectraWatt	Hillsboro	20	no	Intel spinoff on Intel campus (has 20 acres). Halted construction because of a lack of investment money. Moved to New York because of public incentives.
Sanyo	Salem	20	no	
Oregon Crystal Technologies	Gresham	Less than 1	yes	In Rockwood urban renewal area – deciding between 2 existing buildings
Uni-Chem	Eugene	200	yes	Locating in old Hynix semiconductor factory, which is 1,000,000 square feet. Remainder of property is vacant.

ATTACHMENT 2

Proposed revisions and corrections to September 15, 2009 Draft Urban Growth Report

Additions to text are shown underlined

Deletions are shown ~~striketrough~~

Employment analysis

Pg. 35:

Delete the final paragraph on the page.

Appendix 3, page 1:

Delete the final paragraph on the page.

Pg. 54, Table 20:

Edit the caption to read as follows:

“Table 20: ~~Net~~New employment, square feet and acreage demand, net of refill, by market ring under two growth scenarios (2010 to 2030)”

Pg. 55:

Text to be revised as follows:

“Capacity demand varies by market subarea, accounting for market realities in the location decisions made by the region’s employers. Based on analysis of the trends just described, net of refill demand, there will be ~~a need demand~~ for between 274 and 4,930 acres of ~~additional~~ industrial capacity and between 1,944 and 3,832 acres of ~~additional~~ non-industrial capacity within the UGB by 2030.”

“Figures 14-17 show the 20-year capacity demand (net of refill ~~redevelopment~~ demand) by market subarea. At the low end of the population and employment forecast there is a projected flat demand for industrial jobs, commensurate with national trends showing a decline in manufacturing.”

Pgs. 56-57, Figures 14-17:

Edit captions to clarify that demand is net of refill demand

Pg. 58:

Edit the first paragraph on the page as follows:

“New industrial opportunities that require large buildable lots are difficult to forecast accurately. Demand for large industrial lots (greater than 25 gross acres) is usually precipitated by one or more large employers looking for a new location for a production or warehouse facility. This is dependent on the decisions of individual firms and not the trends of an industry as a whole. Consequently, forecasts of large lot demand are inevitably uncertain. With that caveat, this analysis looks at the large lot preferences of large employers and multi-tenant business parks using a forecast-based approach. Given this uncertainty, the Metro Policy Advisory Committee has recommended the consideration of additional large lot demand that supplements the demand identified through the employment forecast-based approach.”

Edit the final paragraph on the page as follows:

“Large-lot demand for marine and rail terminal uses is not included in this analysis. These types of facilities may have relatively few employees and little building square footage. Consequently, a job forecast may be an inadequate means of forecasting land demand for these uses. This is another reason why additional large lot demand is considered as a supplement to the demand identified through the employment forecast-based approach.” ~~Furthermore~~ ~~However~~, these uses are extremely location specific and their preferences are not likely to be ~~met~~ ~~accommodated~~ through UGB expansions.

Pg. 83:

Last paragraph on page to be revised as follows:

“Figures 30 and 31 depict the 5- and 20-year ~~acreage building square foot~~ demand range (from the 20-year forecast) for industrial and ~~commercial~~ non-industrial employment along with the previously described capacity range. Large lot demand and capacity are addressed separately. The demand range is illustrated with two lines that show the upper and lower end of the ~~acreage building square foot~~ demand forecast.”

Pg. 84:

Insert the following text below figure 30:

“This portion of the analysis assesses the current urban growth boundary’s capacity to accommodate industrial job growth on vacant, buildable land or through refill. The assessment of demand for large, vacant lots for industrial uses is handled separately. At both ends of the employment range forecast, there is adequate capacity inside the current urban growth boundary to accommodate the next 20 years of general industrial job growth.”

Pg. 85:

Insert the following text below figure 31:

“Depending on the amount of non-industrial employment growth that is realized, there is demand for zero to 1,168 acres of additional capacity.”

Pg. 86:

To reflect MPAC’s recommendation on large lots for industrial uses, edit the heading at the top of the page to read as follows:

“Comparison of large lot supply with forecast-based assessment of ~~potential~~ large lot demand”

To reflect MPAC’s recommendation, edit the second paragraph on the page to read as follows:

“Without any assumption about tax lot assembly, this employment forecast-based analysis identifies surplus capacity of 25-to-50-acre lots, but a potential deficit of tax lots over 50 acres and lots over 100 acres (under both the high and low growth forecasts), as shown in Table 32.”

To reflect MPAC's recommendation, add the following section to the end of the page:

"Policy basis for considering an expanded range of large lot demand"

The forecast-based assessment of large lot demand provides policy makers with an initial range of potential demand to consider. However, as noted, assessing future large lot demand with a job forecast-based approach has limitations. There are legitimate policy reasons to consider a wider range of demand for large lots, using the initial forecast-based approach for a sense of scale. Doing so gives policy makers the flexibility to weigh the risks and benefits of providing too much or too little large lot capacity.

There is inherent uncertainty in forecasting employment in large, traded-sector firms, which may consider several cities, regions, states or countries when choosing a site. These firms can have economic multiplier effects, bringing wealth into the region and leading to spinoff firms and employment. A few cities in the region have identified large lot users (particularly high-tech manufacturers) as a primary focus of their economic development plans. The range of large lots that will be in demand over the next 20 years will be the product of a number of factors that are impossible to forecast, including:

- Decisions of individual firms that participate in a global marketplace; and
- The political will of cities, the region, and the State (both here and in other regions) to implement economic development strategies.

The forecast-based analysis also assumes that preferences for large lots will remain largely the same in the future as they are today. There are at least two countervailing trends that indicate preferences may change, particularly for industrial, warehouse, and distribution uses. The direction and degree of change is open to interpretation:

- Rising land prices may lead to more efficient use of land, thereby increasing the number of employees per acre; and
- The substitution of machinery and robotics for human labor may reduce the number of employees per acre.

An employment forecast-based approach may also have shortcomings for estimating land demand for rail, air and marine terminal uses. These uses are critical to the health of the region's economy. Freight terminal uses can require relatively large areas of land, but do not necessarily require high employment densities. Consequently, demand for these uses may not be adequately accounted for using an employment forecast alone.

No amount of technical analysis can provide a completely precise assessment of future large lot demand. Thus, the Metro Policy Advisory Committee has expressed a desire to have flexibility in the region's plans to attract and retain potential traded-sector employment growth. Due to the limitations of further technical analysis, the expansion of the potential range of large lot demand is being done on a policy basis rather than through technical analysis. This expansion of the range is consistent with the guidance offered by Oregon Administrative Rule 660-024-0040, which states that: *"the 20-year need determinations are estimates which, although based on the best available information and methodologies, should not be held to an unreasonably high level of precision."*

When the forecast-based analysis and policy considerations are taken into account, as recommended by the Metro Policy Advisory Committee, the total 20-year demand for additional capacity in large lot

configurations is between 200 and 1,500 acres. Within this range, there is a need for policy flexibility in determining the sizes and locations of large lots to provide, so this final analysis does not specify those characteristics.”

Residential analysis

Pg. 114:

Insert a map of the residential buildable land inventory.

Pages 115-117

Edit the section on parks as follows:

“Parks: To calculate the UGB’s capacity for residential growth, this urban growth report deducts the amount of vacant land inside the UGB that may be used for future parks (effectively, this amount of land is not available for residential development). This calculation only includes future parks that are intended for active uses, such as ball fields or playgrounds. Habitat or natural areas are not included since they are already deducted from the vacant land inventory.

There are several possible ways to calculate the number of acres that may be used for future parks. ~~One approach would be to use a level of service standard for parks. However, an agreed upon regional standard does not exist. Since no alternative approach has been suggested,~~ This urban growth report builds on ~~uses the same~~ methodology that was used for the 2002 report. That This methodology was recommended by MPAC in 2002 and was based on estimated park land acquisition revenues, based on from system development charges (SDCs).

To inform the analysis in this report, current park SDC rates were inventoried for each city in the region. (Information may be found in Appendix 6.) Most of the local governments that levied parks SDCs in 2002 have increased their rates. In addition, two cities, King City and Rivergrove, have started levying parks SDCs since 2002. Also, a few local governments are currently employing a system whereby different fees are levied in different locations.

The 2002 urban growth report estimated that 1,100 acres of vacant land inside the UGB would be used for future parks. Like other possible approaches to estimating future park acreage inside the UGB, this SDC approach has its limitations and should be taken as a reasonable estimate rather than a precise accounting. Due to these limitations (summarized below), the updated inventory of park SDC rates does not provide a compelling reason to substantially alter ~~change~~ this assumption:

- Each city will respond to residential growth in different ways. For instance, some cities may not have much vacant land left for parks, but will use SDC revenues to make capital improvements to existing parks.
- Different cities will witness different amounts of residential growth. A local government with high parks SDCs may not see a lot of growth over the next 20 years, while a local government with low SDC rates may see tremendous growth, or vice versa.
- While a majority of local governments around the region have increased their parks SDCs over the last several years, this does not mean that there is additional money for land acquisition.
 - It is likely that the increased rates are an attempt to more fully recuperate land acquisition or capital improvement costs and that updated SDC rates still do not cover all costs.

- The cost of flat, vacant land will continue to increase. SDC revenues will not necessarily keep pace with land values.
- Funding for parks is and probably will continue to be limited. Metro's 2008 *Regional Infrastructure Analysis* found that the cost and availability of land is one of the biggest challenges in providing sufficient parks to accommodate future growth.
- A line item in an urban growth report for parks will not necessarily result in parks for citizens to enjoy. The effect is simply that the vacant land supply assumption is reduced, increasing the potential need for UGB expansions. A UGB expansion will not address park needs in existing urban areas, which are likely to see substantial growth.
 - There is a Major UGB Amendment process that can be initiated by local jurisdictions to bring land into the UGB for park needs that are not anticipated in cyclical legislative UGB expansions (as contemplated in the context of this report). The Major Amendment Process may be a more appropriate means of addressing specific park needs that can be accommodated through UGB expansions.

Limited funding and limited vacant land in urban locations point to a need for creative and collaborative solutions that help ensure the future provision of parks throughout the region:

- Efficient use of existing land and infrastructure by taking advantage of power line easements or the space around reservoirs and water towers. For example, Tualatin Hills Park and Recreation District utilizes existing Bonneville Power Administration rights of way to operate parks and trails.
- Collaboration between multiple districts or other local governments. Sunnyside Village Green Park is a collaborative effort between North Clackamas Parks and Recreation District and Clackamas County's Water Environment Services Department that combines park facilities with stormwater management infrastructure.
- The Trust for Public Land's 2009 article on "shoehorn parks" recognizes that school facilities can be leveraged to create park capacity, but doing so requires great collaboration and commitment to success from park districts and the school system (Harnik, 2009). Popular events like Portland's Sunday Parkways demonstrate that streets can serve as temporary park space.

To maintain an approach that is consistent with the one recommended by MPAC in 2002, an implied parks level of service was calculated as follows:

The 2002 Urban Growth Report forecasted growth of 220,700 dwelling units over the 20 year period and identified that 1,100 acres should be deducted from the vacant land supply for future parks for the same time period. The implied level of service was 1,100 park acres for 220,700 new dwelling units. The current Urban Growth Report forecasts 262,400 new dwelling units in the UGB over the next 20 years (baseline assumption). Applying the same implied level of service standard as used in 2002 ($1,100 / 220,700 * 262,400$) results in a deduction of 1,300 acres from the region's vacant land supply to address future park demand."

Appendix 6, page 11

Edit the final paragraph on the page to read as follows:

“The 2002 urban growth report estimated that 1,100 acres of vacant land inside the UGB would be demand~~used~~ for future parks. Like other possible approaches to estimating future park acreage demand inside the UGB, this SDC approach has its limitations and should be taken as a reasonable estimate rather than a precise accounting. Due to these limitations (summarized below), the updated inventory of park SDC rates does not provide a compelling reason to substantially alter ~~change~~ this assumption.”

Add the following text:

“To maintain an approach that is consistent with the one recommended by MPAC in 2002, an implied parks level of service was calculated as follows:

The 2002 Urban Growth Report forecasted growth of 220,700 dwelling units over the 20 year period and identified that 1,100 acres should be deducted from the vacant land supply for future parks for the same time period. The implied level of service was 1,100 park acres for 220,700 new dwelling units. The current Urban Growth Report forecasts 262,400 new dwelling units in the UGB over the next 20 years (baseline assumption). Applying the same implied level of service standard as used in 2002 ($1,100 / 220,700 * 262,400$) results in a deduction of 1,300 acres from the region’s vacant land supply to address future park demand.”

Pg. 127:

Correct the residential supply range on the bottom of the page such that the expected supply is 196,900 dwelling units and the potential supply is 356,800 dwelling units. This correction is necessary because of the revised estimate of future parks acreage demand and to correct calculation errors.

Appendix 6, page 2:

Replace the table with the following. This table contains changes that are necessary because of the revised future parks acreage estimate and to correct calculation errors.

2009 to 2030 Urban Growth Report (UGR)				
Residential Dwelling Capacity Range Assessment				
December 2009				
Line No.		Residential DEMAND Assumption		
		Low	Baseline	High
Residential Demand Estimates (in Dwelling Units)				
1a/	7-County Population Forecast (2007 to 2030)	728,200	875,000	1,024,400
1b/	7-County Household Forecast (2007 to 2030)	348,600	408,300	469,100
2/	Capture 61.8% of 7-County Forecast in Metro UGB	215,400	252,300	289,900
3/	plus: 4% vacancy rate (source: 2000 Census)	8,600	10,100	11,600
4/	Dwelling Unit Demand in the Metro UGB:	224,000	262,400	301,500
		Residential SUPPLY Assumptions		
July 2007 Vacant Land Inventory (Metro UGB):			BASELINE	
5/	Gross Vacant Land in current Metro UGB		44,800	
6/	less: Local Water Quality, floodways and Habitat Protection areas (ENV)		8,600	
7/	Gross Vacant Buildable Acres in Metro UGB (GVBA)		36,200	
8/	less: Fed., State, Municipal exempt land (actual count)		3,200	
9/	less: Acres of Platted Single Family Lots (actual count)		1,300	
10/	less: Acres for Future Places of Worship and Social Org. (actual = 600 acres)		700	
11/	less: Major Easements (Natural Gas, Electric & Petroleum) (actual count)		1,000	
12/	less: Acres for Future Streets (0%, 10%, 18.5%)		4,900	
13/	less: Acres for New Schools (H=45, M=55, E=70; actual = 1,000 acres)		1,000	
14/	less: Acres for New Parks (based on SDC fees)		1,300	
15/	less: New Urban Areas (actual net of ENV, future streeets and dev. land)		7,900	
16/	Net Vacant Buildable Acres (NVBA) - total		14,800	
Net Vacant Buildable Acres (NVBA) by Type (less-New Urban Areas):			Metro UGB	
17a/	Net Vacant Buildable Acres - Mixed Use Residential (MUR)		1,000	
17b/	Net Vacant Buildable Acres - Residential		6,300	
		Residential CAPACITY Assumption		
Residential Housing Supply Assessment - Metro UGB		Low	Baseline	High
18/	Dwelling Unit Capacity of Vacant Land at Local Zoning (or Plan) - 2008 Q3	62,500	62,500	62,500
18a/	less: High-density MFR products not market feasible within next 20 years	(18,400)	(18,400)	
19/	add: Res. Development in vac. Mixed Use Districts (MUR)	28,600	28,600	28,600
20/	less: Capacity Lost to SFR Underbuild @ 5%	(2,200)	(2,200)	(2,200)
21a/	add: Res. Development Capacity on ENV land (no. taxlots wholly in Title 3)	100	100	100
21b/	add: Res. Development Capacity on Title 13 areas (80% of zoned capacity)	19,300	19,300	19,300
22/	add: Units from Platted Single Family Lots under 3/8 acre (actual count)	8,800	8,800	8,800
23/	add: Units from Residential Refill @ 33%	73,900	86,600	99,500
23a/	add: Units from Residential Refill @ 40% (addition of 7% more)			21,100
23b/	add: Potential Units from Subsidized Residential Refill			71,100
24/	add: Estimated Capacity from New Urban Areas	48,000	48,000	48,000
25/	less: New Urban Development not yet market feasible	(24,000)	(24,000)	
26/	Subtotal: Dwelling Unit Capacity Supply Range	196,600	209,300	356,800
		Low Supply - High Demand		Low Demand - High Supply
27/	Full range of difference between capacity and demand (dwelling units):	(104,900)	(53,100)	132,800
		Low Supply - Low Demand		Low Supply - High Demand
28/	UGR assessment of difference between capacity and supply (dwelling units)	(27,400)		(104,900)

Pg. 128:

Insert the following text after the second-to-last paragraph on the page:

“Through the year 2030, counting only the “solid” capacity, there is demand for additional capacity to accommodate between 27,400 to 104,900 households.”

Appendix 7, pg. 3:

Revise the table to include median household income levels for the eight household types. Include this information throughout the appendix.

Appendix 8, pg. 8:

Edit the text to read as follows:

“Figures 4.1AB and C show the region’s residential capacity by generalized zoning. Figure 4.1AB depicts the gross buildable acres of residential land by “vacant” and “partially vacant” categories.”

Appendix 8, pg. 8:

Insert the following table and notes:

Table 4.1AB: Gross vacant and partially vacant acres inside the UGB by zoning class (year 2007)

Zone Class	Fully Vacant Tax lot Acres	Partially Vacant Tax Lot Acres	Total Vacant Acres
CC	21	24	45
CG	349	195	543
CN	28	34	62
CO	89	51	140
FF	2,788	3,570	6,358
IH	768	1,066	1,834
IL	2,415	2,386	4,801
MFR1	41	95	135
MFR2	168	174	341
MFR3	116	144	260
MFR4	95	96	191
MFR5	9	32	41
MFR6	1		1
MFR7	73	51	124
MU	2	0	2
MUE	1,114	1,371	2,485
MUR1	79	35	114
MUR10	105	66	170
MUR2	120	160	279
MUR3	24	21	45
MUR4	141	150	291
MUR5	177	71	249
MUR6	21	9	31
MUR7	200	87	286
MUR8	128	146	275
MUR9	110	97	207
PF	54	246	299
POS	274	349	622
RRFU	4,130	7,253	11,383
SFR1	47	61	108
SFR10	40	46	86
SFR11	41	16	57
SFR12	77	74	152
SFR14	44	8	52
SFR15	26	44	71

SFR2	778	884	1,662
SFR3	36	41	77
SFR4	1,463	1,663	3,126
SFR5	1,032	1,045	2,077
SFR6	1,043	1,470	2,513
SFR7	407	331	739
SFR8	21	34	55
SFR9	164	378	541
Total	18,859	24,073	42,932

Note: Acreages reported in this table differ somewhat from the acres reported in the UGR because of differences in how public rights of way, public lands, etc. are accounted for.

Appendix 8, pg. 8:

Delete references to Table 4.1C. Data for Table 4.1C has been consolidated to appear in table 4.1AB.

Appendix 8, pg. 10:

Insert the following table and notes:

Table 5.1: Metro UGB historical land use consumption in acres: 2002-2007

Year	2002	2003	2004	2005	2006	2007
Developed land	201,336	203,145	204,456	205,894	209,419	210,582
Vacant land	52,514	50,705	51,151	49,727	46,235	45,076
<i>Total</i>	<i>253,849</i>	<i>253,850</i>	<i>255,607</i>	<i>255,621</i>	<i>255,654</i>	<i>255,658</i>
Vacant land detail	2002	2003	2004	2005	2006	2007
Residential vacant	16,488	15,617	14,944	13,672	12,307	12,099
Nonresidential vacant	12,047	11,679	11,865	9,764	8,881	8,485
Open space, rural, parks	16,560	16,290	17,303	15,362	15,610	15,307
<i>Total gross buildable acres</i>	<i>45,095</i>	<i>43,586</i>	<i>44,112</i>	<i>38,798</i>	<i>36,797</i>	<i>35,891</i>
Constrained land	7,419	7,118	7,039	10,929	9,437	9,185
<i>Total vacant land</i>	<i>52,514</i>	<i>50,705</i>	<i>51,151</i>	<i>49,727</i>	<i>46,235</i>	<i>45,076</i>

Notes:

- *Acreages reported in this table differ somewhat from the acres reported in the UGR because of differences in how public rights of way, public lands, etc. are accounted for.*
- *For years 2005 - 2007: res = MFR, MUR, SFR; non-res = COM, IND, MUE; other = PF, POS, RUR. Except: no PF in 2005*
- *For years 2002 - 2004: res = MFR, SFR; non-res = COM, IND, MUC; other = POS, RUR*
- *For years 2002 - 2005: PF are part of COM*
- *Constrained land for years 2005 - 2007 is based on the constrained land analysis completed for the 2009 UGR and includes Title 3 and Title 13 land*
- *Constrained land for years 2002 - 2004 is based on Title 3 land only*

Appendix 8, pg. 20:

Insert the following sentence in first paragraph:

“All dollar amounts are expressed in 2005 dollars.”

Appendix 8, pgs. 20 and 21:

Correct tables 303.1a and 303.1b to reflect potential demand for government assistance at more price levels. Corrected tables to appear as follows:

Figure 303.1a: owner-occupied dwelling units by price (2005\$) and housing type (2005 and 2030)

Owner-occupied dwelling units							
	Total dwelling units			Detached Housing		Attached Housing	
Approx. dwelling value	Year 2005	Year 2030	Difference in dwelling units 2005 to 2030)	Single-family and manufactured units	Manufactured units in parks	Single family units	Apartments, townhouses, condos
< \$150,000	30,259	44,411	14,152	A	A	A	A
\$150,000 - \$200,000	27,191	26,954	(237)	A	A	A	A
\$200,000 - \$250,000	31,796	15,301	(16,495)	MRKT	MRKT	MRKT	MRKT
\$250,000 - \$300,000	21,442	30,657	9,215	MRKT	MRKT	MRKT	MRKT
\$300,000 - \$400,000	44,089	41,522	(2,566)	MRKT	MRKT	MRKT	MRKT
\$400,000 - \$500,000	49,363	52,167	2,804	MRKT	MRKT	MRKT	MRKT
\$500,000 - \$750,000	58,184	107,613	49,429	MRKT	MRKT	MRKT	MRKT
> \$750,000	96,294	265,820	169,527	MRKT	MRKT	MRKT	MRKT
Total Units	358,617	584,445	225,828	116,848	*	*	108,980

Figure 303.1b: renter-occupied dwelling units by price (2005\$) and housing type (2005 and 2030)

Renter-occupied dwelling units							
	Total dwelling units			Detached Housing		Attached Housing	
Approx. monthly rent	Year 2005	Year 2030	Difference in dwelling	Single-family and manufactured	Manufactured units in parks	Single family units	Apartments, townhouses, condos
< \$400	43,167	19,195	(23,972)	A	A	A	A
\$400 - \$475	18,967	31,926	12,958	A	A	A	A
\$475 - \$550	25,514	25,812	298	A	A	A	A
\$550 - \$625	27,479	24,531	(2,948)	A	A	A	A
\$625 - \$750	24,854	38,485	13,630	A	A	A	A
\$750 - \$900	34,359	43,000	8,641	A	A	A	A
\$900 - \$1,100	13,315	40,881	27,566	A	A	A	A
> \$1,100	26,038	64,724	38,686	MRKT	MRKT	MRKT	MRKT
Total Units	213,693	288,554	74,861	1,676	*	*	73,185

Appendix 8, pgs. 20 and 21:

Edit note that accompanies tables 303.1a and 303.1b to read as follows:

“A” denotes housing that would be partially assisted, given the dwelling unit value. It is a question for policy makers how many of these units will receive government assistance. As of November 2007, 10,608 households in the tri-county area received Section 8 vouchers.

Pgs. 133 and 135:

Correct data labels on pie charts (charts for high growth erroneously show the same percentages as low growth).

Pg. 151:

Under “policy choices,” insert the following additional policy option:

“Expansion of housing voucher programs could increase housing choices for more households.”

Pg. 153:

Edit the first paragraph of the “future cost burden” section as follows:

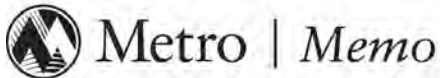
“If we continue with current policy and investment direction, the number of cost-burdened households could double by the year 2030. In the year 2005, there were approximately 94,000 cost-burdened households inside the Metro UGB (about 16 percent of all households in the Metro region or about 43 percent of renter households). By the year 2030, if current trends and policies continue, between 17 to 23 percent of all ~~the~~ households inside the Metro region or 51 to 69 percent of renter households could be described as cost-burdened. If the high end of the population range forecast is reached by the year 2030

and new policies and investments are not pursued, the number of cost-burdened households may more than double, totaling 200,000 households.”

Pg. 154:

Correct the number of cost burdened households in the year 2005 (92,060).

ATTACHMENT 3



Date: November 24, 2009
To: Malu Wilkinson, urban growth report project manager
From: Dennis Yee, Metro Chief Economist
Re: Technical Reviews Conducted to Validate Metro's Regional Macro-economic modeling and forecasting

Background

Leading up to Metro's periodic assessment of the urban growth boundary's capacity to accommodate residential and employment growth, three separate review panels were formed at various times to assist Metro in the validation of its economic/demographic modeling and forecasting methods and to analyze forecast results. The population and economic trends of the Portland-Beaverton-Vancouver PMSA region were examined by these review panels. Each panel validated Metro's overall modeling and forecasting methods and was asked to look closely at a certain aspect of the modeling and forecasting methodology. The panels' independent expertise was utilized to review and recommend improvements.

Review Panel One *(National review panel convened to validate forecast theory and practice)*

The first review panel was convened in 2006 – mainly to review the forecast methodology, analyze the technical efficiency of econometric equations and model specifications and to review the soundness of Metro's proposed probabilistic population forecast approach [i.e., range forecast methodology] and range / risk forecasting and analysis.

Composition of review panel one

- Dr. Lawrence Carter, University of Oregon – expert in demographic forecasting
- Dr. George Hough, Portland State University – director of center for population research and census
- Dr. Tom Potiowsky – State Economist, Oregon
- Dr. Marshall Vest – director of Economic and Business Research Center, Professor of Economics, University of Arizona
- Dr. Mary Allender, University of Portland – Assoc. Professor of Economics and Statistics
- Dr. Tim McDaniels, University of British Columbia – environmental policy, decision making & risk management

Summary remarks and conclusions of review panel one

1. The panel was asked to review and then validate Metro's economic and demographic forecast methodology and confirm the correctness of using a range forecast approach.

- Panel members unanimously agreed that a range forecast is the preferred approach in helping decision makers with managing an uncertain economic future and providing leeway for managing forecast risk especially in the extreme long-run as is the case in Metro's management of the urban growth boundary. The nature of Metro's decision making should, according to the panel, rely upon an economic model that utilizes a structural approach for forecasting growth trends, and also permits analysts to run scenarios and test policy sensitivities to various land use, economic or transportation policy variables. Metro's modeling framework according to the panel is well suited for the type of analytical applications employed by Metro.
2. Upon confirming the general approach of the Metro economic model, the panel turned to analyzing and validating the individual structures of the economic model and its efficacy for Metro planning and policy analysis purposes.
 - Panel members reviewed the technical specifications of each economic equation, variable and statistical efficiency and soundness of the equations. They determined that the Metro economic model represented the current practice of modeling regional economies and employed state of the art theories and practices.
 - They found the use of the inter-industry demand variables which capture the input-output relationships between regional industries to be a unique and innovative approach that should improve forecasting accuracies and represent well the possibilities of testing policy sensitivity on industry employment changes.
 - The panel analyzed the linkages between regional job growth and national job trends. Staff explained that the econometric equations were developed to maximize the information that national forecasts would reveal in regional growth and that Metro utilized as national forecast drivers the projections produced by IHS Global Insight, Inc., a nationally recognized firm. Panel members did not believe we could necessarily do any better assuming forecast drivers from other vendors. In fact both, Oregon and Arizona forecasters utilize to a high degree products produced by Global Insight.
 3. Certify the overall fitness of the Metro economic model for its use in projecting population and employment growth for the Portland-Beaverton-Vancouver, OR-WA PMSA.
 - The panel reviewed the soundness of the model by comparing the job multipliers³ reported by Metro's econometric model and those of other known models for other regions in the U.S. The regional model passed all the battery of usual econometric and statistical tests for goodness of fit.

³ Multipliers summarize and describe the internal properties and workings of the model –they are one of many diagnostic tools. Exceedingly large multipliers would cause the model to exhibit unstable properties and explosive non-convergence, which would tend to invalidate the model. None of the employment multipliers in the short or long-run displayed a significant problem.

Review Panel Two *(Statewide review panel convened to validate the 50-year range forecast and assumptions)*

In May 2008, Metro forecasters developed a 50-year regional forecast and implemented the recommendations from the first panel to utilize probabilistic population forecasting techniques and to produce a range forecast. Statewide professionals who were more familiar with Oregon and in particular Portland's economy were called together to discuss their views and analyze the 50-year forecast outlook for the Metro region. In front of an audience of 200 interested stakeholders, these two moderated panels discussed the merits of the range forecast (per the recommendation of the first panel) and validated the soundness of Metro's modeling and assumptions with the objective of certifying the reasonableness of a 50-year population and employment outlook. One panel also discussed the long-range demographic, economic, climate, energy and land use trends that could emerge during the forecast period to influence regional population, employment and land use.

Composition of review panel two

Panel discussion exploring long-range issues and trends that influence regional population, economy and land use

Moderated by Duncan Wyse, President of Oregon Business Council

- Eric Hovee, Principal at ED Hovee & Co., LLC
- Joe Cortright, President of Imprensa LLC
- Mike Martens, Director of Spatial Analysis, EcoTrust
- Dr. Bruce Weber, Prof. of Agriculture and Resource Economics, Oregon State University

Expert panel to present and discuss results from different forecasting methods and to provide perspectives through a moderated discussion.

- Dr. Kanhaiya Vaidya – Senior State Demographer, Oregon Office of Economic Analysis
- Art Ayre – State Labor Economist, Oregon Employment Department
- Terry Morlan – Director of Planning, Northwest Power & Conservation Council
- Dennis Yee – Chief Economist, Metro

Summary remarks and conclusions of review panel two

1. Among the topics discussed were: aging population and its impact on future housing demand; economic growth and what could be drivers for the next wave of growth and innovation in the state; climate change and its impact on migration in the US; climate change and Oregon's emphasis on "green development"; and the future makeup of the Willamette Valley's agricultural economy in light of urban development pressures.
 - Although the panelists raised interesting issues that would likely confront the Portland region and impact Portland area population and economic projections, it was plain from the tenor of the discussion that these highly informed commentators had a sense of the risks to the regional forecast, but it was unclear as to how these "mega-trends" would ultimately impact the forecast in a quantifiable fashion.
 - Panelists concluded that these "mega-trends" can impact the forecast and impose significant uncertainty and risk to a forecast. The appropriate response to this very uncertain future is to use a range forecast that affords a high degree of planning flexibility.

2. The chief objective of the afternoon review panel was to gather input and comments about how “mega-trends” may eventually feed through to impact regional long-term growth. Each of the panel members are forecast practitioners who have had significant experience in forecasting growth in Oregon. The panel was charged with reviewing the implementation and results of Metro’s 50-year regional range forecast.
 - The state demographer confirmed that the state and Metro employ similar cohort-component models for forecast long-run population trends. There are differences in key assumptions, but they owe to variations between state-level demographics vs. Metro demographics which tend to more urban conditions that impact fertility and mortality rate assumptions.
 - The state labor economist prepares county-level employment estimates. Although no two forecasts are necessarily alike, he concluded that the underlying assumptions are consistent between the Metro model vs. the state’s county-level economic model. Growth rates in Metro’s base case scenario and the state’s forecasts were highly comparable (the state does not produce a range forecast so only base case numbers could be compared).
 - The NW Power Planning Council utilizes sophisticated forecast simulation software. This software is capable of generating a multitude of scenarios which are combined to form a “solution space” or “forecast envelope” (i.e., range forecast). The forecast director for the Power Planning Council echoed numerous times the importance of risk planning and the need for economic and demographic forecasts to recognize uncertainty in its growth trends. Although Metro uses a different software approach in formulating its forecast ranges, there was agreement that “range forecasting” is the appropriate means to project long-term regional growth.

Review panel three *(Local review panel convened to validate the 20-year range forecast and regional growth assumptions which could impact the economy, population and land use trends)*

A third panel was formed in 2009 to review the 20-year regional forecast that became the basis for the urban growth report for housing and employment. This panel’s chief responsibility was to validate the 20-year range forecast and to identify any regional trends that didn’t comport with national trends. This panel was composed of local practitioners, forecasters, consultants and stakeholders who rely on the forecast for municipal planning purposes.

Composition of review panel three

- Steve Kelley, Senior Planner, Washington County
- Scott Drumm, Manager, Research & Market Information, Port of Portland
- Eric Hovee, Principal at ED Hovee & Co., LLC
- Scott Bailey, Washington State Economist, Vancouver area focus
- Brendan Buckley, Johnson-Reid LLC
- Uma Krishnan, City of Portland Demographer
- Todd Chase, FCS group LLC

Summary remarks and conclusions of review panel three

1. Review appropriateness of range forecast methodology
 - The panel agreed that due to forecast uncertainty and the degree of risk going into the future, a “range forecast” was more preferable than a “point forecast”. Planning flexibility was an oft-cited reason in favor of proceeding with a range forecast.
2. Discuss reasonableness of the “width of the range forecast”
 - The panel did not spend much effort reviewing the variance assumptions that comprise the range, but generally believed that using historical variances as a surrogate for future forecast variances was a satisfactory means of estimating future ranges. The ranges were estimated using “monte carlo” simulation software such that a 90% cumulative distribution function was defined as the forecast range for population. Overall, total employment and population “widths” for the forecast range seemed statistically appropriate, but some disagreement arose when discussion turned to individual industry projections for employment. (see next bullet)
3. Review soundness of forecast outlook
 - There was minimal concern that the annualized growth rates for both population and employment projections for the region were slower than at any recent historical experience except for decade of the 80’s which saw growth plummet due to the recession. It was explained that in the last 30 years, the Portland region is now (over 2 million people) twice its former size. Even with lower predicted growth rates (1.4% APR), growth compounding each year the region is expected to again nearly double in size during the next 30 years.
 - The debate on the regional forecast centered mostly around selected industries and, in particular, the potential for some emerging industry(s) to erupt with significant job growth and, with that job trend, bring large firms that could anchor growth in that particular industry for decades to come. The debate circled around how much faster can we reasonably predict job growth in one industry to outpace the U.S. average or U.S. forecast. The Metro forecast already assumes (as a placeholder) the high tech sector in the region to be a sector that we predict to be a “high-flyer” in manufacturing. (Most other Metro manufacturing sectors are projected to perform slightly better over the forecast period than the U.S. projected average, but high-tech has been singled out to be an above average growth sector.) [Please see Metro Regional Forecast Employment appendix that compares the US forecast against the Metro forecast.] The debate boils down to a matter of degree about how much faster high tech in the region will likely outpace nationwide trends. Metro believes that its forecasting is sound and based on statistically valid relationships modeled between the regional economy and the U.S. A minority of the panel members disagreed, believing that anecdotal interviews and ad hoc evidence point to significantly faster economic growth.

4. Discuss impact land supply has on regional growth projections
 - Land supply is not presently an explicit explanatory variable in the regional macro-economic model. In the past, there was no statistical evidence that showed land supply as a sticking point to economic growth. However, in the past, vacant land was not as scarce as it is today for urban style development purposes. Land has not been a limiting factor in the past, so it's not surprising that Metro's statistical modeling would not reveal any tangible correlation.
 - Recently, practical measurements of land supply indicate much less available land than previous measures have shown. Members agreed that land is a factor input into production and a key ingredient in promoting economic development. Still, there has been scant statistical evidence that we can draw upon to embed a land and capital substitution parameter into the econometric model that would stand up to statistical inquiry. On the other hand, there is mounting conjectural evidence that large tracts of inexpensive land can be a motivating factor to attracting large scale manufacturing plants to a particular region.
 - Technological innovation and comparative manufacturing advantages may make this point moot in the distant future, but again the panel could not settle on a conclusion. This issue is still unresolved and to be determined in future forecasts.

Agenda Item Number 4.2

Resolution No. 09-4095, For the Purpose of Authorizing the Chief Operating Officer to Purchase Property in the Chehalem Ridgetop to Refuge Target Area Under the 2006 Natural Areas Bond Measure and Subject to Unusual Circumstances

COUNCILOR HARRINGTON

Metro Council Meeting
Thursday, December 10, 2009
Metro Council Chamber

BEFORE THE METRO COUNCIL

AUTHORIZING THE CHIEF OPERATING OFFICER
TO PURCHASE CERTAIN PROPERTY IN THE
CHEHALEM RIDGETOP TO REFUGE TARGET AREA
UNDER THE 2006 NATURAL AREAS BOND
MEASURE AND SUBJECT TO UNUSUAL
CIRCUMSTANCES

RESOLUTION NO. 09-4095

Introduced by Chief Operating Officer
Michael J. Jordan, with the
concurrence of Council President
David Bragdon

WHEREAS, at the general election held on November 7, 2006, the voters of the Metro region approved Measure 26-80, the 2006 Natural Areas Bond Measure submitted to the voters to preserve natural areas and clean water and protect fish and wildlife (the "Measure"); and

WHEREAS, on March 1, 2007, the Council approved Resolution No. 07-3766A "Authorizing the Chief Operating Officer to Purchase Property with Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan," (the "Acquisition Parameters and Due Diligence Guidelines"); and

WHEREAS, on September 20, 2007, the Council approved Resolution No. 07-3857, "Approving the Natural Areas Acquisition Refinement Plan for the Chehalem Ridgetop to Refuge Target Area," establishing the protection of "large, undeveloped tracts of forestland to protect water quality, wildlife habitat and connections and to provide public access opportunities" as the goal of the target area; and

WHEREAS, Resolution No. 07-3857 established as a Tier I Objective the acquisition of "upper elevation forestlands and oak woodlands on the Chehalem Ridge to enhance water quality and wildlife habitat and to provide potential public access opportunities"; and

WHEREAS, staff have entered into a purchase and sale agreement with the Trust for Public Land ("TPL") who has an agreement with a current property owner to purchase 1,143 contiguous acres of property located on Chehalem Ridge and identified as a Tier I objective in the target area, as more particularly identified and described on Exhibit A to this resolution (hereinafter, the "Property");

WHEREAS, the appraisal of the Property provided to Metro by TPL, which was prepared by an appraisal firm on the Natural Area Program's list of approved appraisal firms and frequently used to perform appraisals for Metro, relied upon two extraordinary assumptions regarding issues related to (1) a zoning change and development plan proposed by the owner that would allow 14 buildable acreage homesites and (2) the reliance on preliminary engineering and construction cost estimates for the proposed homesites; and

WHEREAS, the appraiser's conclusion of the fair market value of the Property confirmed the negotiated purchase price for the Property, but Metro's review appraiser did not confirm that value, instead arriving at a market value conclusion below that of the first appraisal; and

WHEREAS, the appraisal issues described above are "unusual circumstances," under the Acquisition Parameters and Due Diligence Guidelines, and the Council therefore must approve acquisition of the Property; and

WHEREAS, the opportunity to purchase such a Property comparable in size to Metro's Oxbow Regional Park in a single transaction represents an unprecedented opportunity in the Open Spaces and Natural Areas Program's history, its purchase will meet and well exceed the Tier I acquisition goals within the Chehalem Ridgetop to Refuge Target Area, and, the Property provides extensive and exciting opportunities to achieve both habitat preservation and restoration, protection of water quality, and public recreation goals easily accessible to the residents of the region; and

WHEREAS, to date, the 2006 Natural Areas Program has acquired approximately 1,166 acres of land for a total purchase price of over \$46 million, averaging out to a price of approximately \$39,500 per acre; and

WHEREAS, the purchase price is supported by one appraisal and, given the recent economic volatility being experienced by the country and the region, we believe that the acquisition of the Property at the negotiated purchase price, which equates to approximately \$5,350 per acre, is a wise investment in light of the extensive future benefits that the Property will provide to the citizens of the region; now therefore

BE IT RESOLVED that the Metro Council hereby authorizes the Chief Operating Officer to acquire the Property, as identified in Exhibit A, at the negotiated purchase price, notwithstanding the unusual circumstances related to the appraisals of the Property, provided that the acquisition is otherwise in accord with all of the other Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan.

ADOPTED by the Metro Council this _____ day of _____ 2009.

David Bragdon, Council President

Approved as to Form:

Daniel B. Cooper, Metro Attorney

Exhibit A to Resolution No. 09-4095

Target Area: CHEHALEM RIDGETOP TO REFUGE
Chehalem Ridge Natural Area

Description: Staff has identified an opportunity to protect 1,143 acres that straddles the top of the Chehalem Ridge south of the Forest Grove and Cornelius (“Chehalem Ridge Natural Area”). The Property is adjacent to the 40-acre Berry property purchased by Metro in 2008 with 2006 Bond Measure funds.

The Chehalem Ridge Natural Area is currently managed as a commercial forest dominated by Douglas-fir, with 80% of the trees less than 25 years of age. In addition, there are fragments of oak woodland and isolated oak and madrone located primarily on slopes on the south and western aspects. Cedar, hemlock and grand fir are present in the cooler drainages, particularly on the east side of the ridge. Headwaters of at least ten streams originate from the Property and flow to the Tualatin River. Five high Cascade mountain peaks are visible from the Property: Rainier, St. Helens, Adams, Hood, and Jefferson. The Property is extraordinary for its large size, because protecting large contiguous areas will have the most benefit to water quality and wildlife. Accordingly, the restoration potential is significant along with its value in providing habitat connectivity to the Wapato Lake area and the Tualatin River floodplain.

The goal set for the Chehalem Ridgetop to Refuge Target Area is 400 acres. The acquisition of the Property will greatly exceed this goal and will complete the Tier I objectives for the target area.

Bond Criteria Addressed:

- Protect upper elevation forestlands and oak woodlands
- Provide restoration opportunities for oak and madrone habitat
- Enhance water quality and wildlife habitat by creating a large block of protected land that connects to other habitat in Wapato Lake and the Tualatin River Floodplain
- Provide future recreational and educational opportunities as well as sweeping landscape views

Property identification: The following tax parcel numbers and section numbers in Township 1 South, Range 3 West of the Willamette Meridian: Lot 500 in Section 28, Lots 101, 300 and 400 in Section 29, Lots 100 and 200 in Section 32, and Lots 200, 300 and 600 in Section 33.

Sellers: Private Party

Size: 1,143 acres

Stream frontage: Headwaters to at least ten creeks that are part of the Tualatin River basin

Conditions: Standard due diligence; subject to unusual circumstances regarding extraordinary assumptions in the appraisal and purchase price

STAFF REPORT

IN CONSIDERATION OF RESOLUTION NO. 09-4095 AUTHORIZING THE CHIEF OPERATING OFFICER TO PURCHASE CERTAIN PROPERTY IN THE CHEHALEM RIDGETOP TO REFUGE TARGET AREA UNDER THE 2006 NATURAL AREAS BOND MEASURE AND SUBJECT TO UNUSUAL CIRCUMSTANCES

Date: December 10, 2009

Prepared by: Kathleen Brennan-Hunter
503-797-1948

BACKGROUND

Metro has an unprecedented opportunity to purchase a natural area comparable in size and scale to Oxbow Regional Park. This 1,143-acre property straddles the top of the Chehalem Ridge south of the Cities of Forest Grove and Cornelius, and is about 20 minutes from downtown Hillsboro. Acquisition of this Property will protect the headwaters of at least ten streams in the Tualatin River watershed and create exceptional potential for future public recreation. Metro staff has entered into an agreement with The Trust for Public Land (“TPL”) to purchase this Property in the Chehalem Ridgetop to Refuge Target Area, which is more specifically identified in Exhibit A attached to the resolution (the “Property”). TPL has an agreement to purchase the Property from a private owner. Metro has an agreement to purchase the Property from TPL. The Property is adjacent to a 40-acre property acquired with funds from the 2006 Natural Areas Bond Measure.

The Metro Council adopted the Refinement Plan for the Chehalem Ridgetop to Refuge Target Area in September 2007. The Tier I objective for the target area is:

To acquire the upper elevation forestlands and oak woodlands on the Chehalem Ridge to enhance water quality and wildlife habitat and to provide potential public access opportunities.

Given the sensitive nature of real estate transactions, the maps associated with each Refinement Plan are kept confidential. The Property is identified on the Council-approved confidential refinement map for the target area and meets the Tier I objective. If approved, this acquisition will far exceed the number of acres that Metro hoped to acquire in this target area.

The Property straddles the forested ridge of the northern Chehalem Mountains in Washington County, southeast of Forest Grove. It is currently managed as a commercial forest dominated by Douglas-fir, with 80% of the trees less than 25 years of age. There are pockets of remnant rare habitat, including oak-madrone woodlands on slopes with south and western aspects. Cedar, hemlock and grand fir are found in the cooler drainages on the east side of the ridge. At least ten streams originate from the Property and flow to the Tualatin River. In addition, the views from the Property are outstanding, with five high Cascade mountain peaks visible simultaneously from some locations along the ridge: Rainier, St. Helens, Adams, Hood, and Jefferson. An existing gravel and dirt road network could be the basis for a future trail system.

The Property is extraordinary due to its large size. As the largest single acquisition in Metro’s history, it would create a legacy natural area and opportunities for landscape scale restoration. This acquisition prevents the subdivision of one of the largest blocks of contiguous forest remaining in the region. Protecting such a large contiguous area will have a great benefit to water quality and wildlife in the area, and will provide habitat connectivity to the Wapato Lake Unit of the Tualatin River National Wildlife Refuge. It also provides potential recreation not feasible on smaller sites. The Property is similar in size to Metro’s acclaimed Oxbow Park and could provide the opportunity to create a similar large scale natural

recreational area, that could complement the bird and wildlife viewing opportunities anticipated at the Tualatin River National Wildlife Refuge at Wapato Lake near Gaston.

To put the Property in context with other 2006 regional bond measure purchases, to date Metro has acquired 1,166 acres at a cost of over \$46 million. With its 1,143 acres, the Property would nearly double the current acreage.

This Resolution requests authorization for the Chief Operating Officer (COO) to purchase the Property at the negotiated purchase price notwithstanding two unusual circumstances related to the appraisals of the Property. First, the appraisals of the Property relied on two extraordinary assumptions, and second, although the first appraisal confirmed the purchase price for the Property, Metro's review appraiser did not confirm the purchase price. The Council-approved Acquisition Parameters and Due Diligence Guidelines of the Natural Areas Implementation Work Plan (the "Work Plan") prohibit the COO from closing on an acquisition involving such unusual circumstances without first obtaining the Council's approval.

Unusual Circumstance - Extraordinary Assumptions in Appraisal

The appraisal and review appraisal of the Property included two extraordinary assumptions, which means the appraiser presumed some uncertain information to be true in reaching his conclusion about value. The first extraordinary assumption is that the completion of a Washington County zoning change from the Agricultural and Forest-20 zone (AF-20) to the Exclusive Forest and Conservation zone (EFC) and the subsequent application of the dwelling "template test" to allow the creation of 14 buildable homesites with an average lot size of 81.6 acres is feasible. The Property is currently being used for commercial forestry, which is more akin to the uses permitted in EFC zoning. Moreover, earlier this year Washington County approved the same type of zone change on a similar property approximately eight miles from this Property and owned by the owner of this Property, so there is precedent for such a zone change. A zone change from AF-20 to EFC, in this instance, would allow some of the lots to be divided into 80-acre minimum lots, and would then allow homes to be sited on each lot that satisfied the template test. The Office of the Metro Attorney has reviewed documentation provided by TPL and OMA has confirmed that 14 buildable homesite lots would likely be allowed pursuant to the Washington County Community Development Code, provided the zoning change was approved.

The second extraordinary assumption is that the appraisals relied on the preliminary engineering work and construction cost estimates to create the 14 homesites that was prepared by W&H Pacific, Inc. ("WH Pacific"), an experienced, national, land development consulting business. Metro staff believes the cost estimates provided by WH Pacific are reasonable based on past experience with these matters.

Unusual Circumstance - Appraisal Review Did Not Confirm Appraised Value

The appraisal for the Property, which supports the negotiated purchase price of \$6.12 million, was provided to Metro by TPL. The appraisal firm that completed the appraisal is one of the reputable, certified firms from Metro's approved list of appraisers. As is Metro's standard practice following the Implementation Work Plan, Metro hired another well-regarded appraisal firm to review the appraiser's conclusion about the fair market value of the Property. The review appraiser did not confirm the original appraiser's conclusion, and instead determined the fair market value to be significantly less than that of the first appraisal. Both appraisers applied a subdivision analysis using similar methodologies, but the review appraiser was more conservative in his assumptions and conclusions about the marketability of estate size homesites in the current economic climate. Such a disparity in valuation by two reputable appraisers is not unprecedented, especially given the pervasive uncertainty regarding when the residential

development market will rebound out of the current economic downturn. Metro has been informed by TPL that the landowner likely will only sell at the negotiated price and plans to hold the Property for future development if the sale to TPL/Metro is not completed. In addition, Metro staff believes that the landowner is likely to receive approval to create up to twenty Measure 49 homesites from properties around the state that could be transferred to the Property to enlarge the residential development beyond the proposed 14-lot subdivision. This could be make development on the Property more profitable and thus inevitable as the market changes in the future. Staff believes the opportunity to purchase this large, contiguous site might be prohibitively expensive if we do not act now.

Due to the extraordinary opportunity to achieve goals identified in the 2006 Natural Areas Bond Measure, and later specifically defined in the Chehalem Ridgetop to Refuge target area Refinement Plan, Metro staff recommends proceeding with acquisition despite the unusual circumstances outlined above.

ANALYSIS/INFORMATION

1. Known Opposition

None.

2. Legal Antecedents

The voters' approved Metro's 2006 Natural Areas Bond Measure at the general election held on November 7, 2006.

Resolution No. 07-3766A "Authorizing the Chief Operating Officer to Purchase Property With Accepted Acquisition Guidelines as Outlined in the Natural Areas Implementation Work Plan," was adopted by the Metro Council on March 1, 2007, and established the Acquisition Parameters and Due Diligence Guidelines for the purchase of properties as part of the 2006 Natural Areas Bond Program.

Resolution No. 07-3857, "Approving the Natural Areas Acquisition Refinement Plan for the Chehalem Ridgetop to Refuge Target Area," was adopted by the Metro Council on September 20, 2007.

3. Anticipated Effects

The 1,143-acre acquisition will be Metro's largest purchase for the protection of water quality and wildlife habitat in the history of the Open Spaces and Natural Areas Bond Programs. The Property will also complete Metro's Tier I acquisition goals for the target area.

4. Budget Impacts

Metro's contribution to the Property shall be funded with 2006 Regional Bond proceeds.

RECOMMENDED ACTION

The Chief Operating Officer recommends passage of Resolution No. 09-4095.